

**UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF  
TEXAS, DALLAS DIVISION**

**In Re: Highland Capital Management, L.P** § Case No. **19-34054-SGJ11**

**Charitable DAF Fund, L.P et al**

Appellant

§

vs.

§

21-03067

**Highland Capital Management, L.P**

§

Appellee

§

**3:23-CV-01503-B**

[167] Order granting Defendant Highland Capital Management, L.P.'s Renewed motion to dismiss adversary proceeding (related document # [122](#)) Entered on 6/25/2023.

**Volume 24**

**APPELLANT RECORD**

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and CLO Holdco, Ltd.*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:	§ Chapter 11
	§
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§ Case No. 19-34054-sgj11
	§
Debtor.	§
	§
CHARITABLE DAF FUND, L.P. AND CLO	§
HOLDCO, LTD., DIRECTLY AND DERIVATIVELY	§
	§
Plaintiffs,	§ Adversary Proceeding No.
	§
vs.	§ 21-03067-sgj11
	§
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§
HIGHLAND HCF ADVISOR, LTD., AND	§
HIGHLAND CLO FUNDING LTD., NOMINALLY	§
	§
Defendant.	§
	§

*INDEX*

**APPELLANTS' SECOND AMENDED STATEMENT OF ISSUES  
AND DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. ("Appellants") hereby designate the following items to be included in the record and identify the following issues with respect to

their appeal of the Order Granting Defendant Highland Capital Management, L.P.'s "Renewed Motion to Dismiss Complaint" [Adv. Proc. Doc. No. 122] which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 25, 2023.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

- Whether the Bankruptcy Court had jurisdiction to rule on Highland Capital Management L.P.'s Renewed Motion to Dismiss Complaint
- Whether the Renewed Motion to Dismiss Complaint was improperly granted

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

Vol. 1  
000001

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 168].

000042

2. The judgment, order, or decree appealed from: Memorandum Opinion and Order Granting Defendant Highland Capital Management, L.P.'s "Renewed Motion to Dismiss Complaint" [Adv. Proc. Doc. No. 122] [Doc. 167].

000080

3. Docket Sheet kept by the Bankruptcy Clerk.

4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 21-03067-sgj.

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No.	Date Filed	Docket No.	Description/Document Text
1	9/29/21	1	(36 pgs; 3 docs) Adversary case 21-03067. ORDER REFERRING CASE NUMBER 21-CV-0842-B from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division. Complaint by Charitable DAF Fund, LP, CLO Holdco, Ltd. against Highland Capital Management, LP, Highland HCF Advisor Ltd., Highland CLO Funding, Ltd. Fee Amount \$350 (Attachments: # 1 Original Complaint # 2 Docket Sheet from 3:20-cv-0842-B) Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, M.)
2	9/29/21	2	(1 pg) Supplemental Document (cover sheet) by CLO Holdco Ltd., Charitable DAF Fund (RE: related document(s)1 Adversary case 21-03067) [ORIGINALLY FILED IN 21-CV-0842 AS #2 ON 04/13/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)

Vol. 2  000139  000232  000239  000270  Thru Vol. 6	3	9/29/21	6	(93 pgs; 6 docs) MOTION for Leave to File First Amended Complaint filed by CLO Holdco Ltd., Charitable DAF Fund LP (Attachments: # 1 Exh 1_First Amended Complaint # 2 Exh 2_Motion for Authorization to Retain James Seery # 3 Exh 3_Order Approving Retention of James Seery # 4 Exh 4_Order Approving Settlement # 5 Proposed Order) (Bridges, Jonathan) (Entered: 04/19/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #6 ON 04/19/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
	4	9/29/21	22	(7 pgs; 2 docs) MOTION for an Order to Enforce the Order of Reference filed by Highland Capital Management LP. (Attachments: # 1 Exhibit(s) A--Proposed Order) (Annable, Zachery) Modified text on 5/20/2021 (mjr). (Entered: 05/19/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #22 ON 05/19/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
	5	9/29/21	23	(31 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re: 22 MOTION for an Order to Enforce the Order of Reference. (Annable, Zachery) Modified text on 5/20/2021 (mjr).(Entered: 05/19/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #23 ON 05/19/2021 IN U.S.DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
	6	9/29/21	24	(926 pgs; 29 docs) Appendix in Support filed by Highland Capital Management LP re: 23 Brief/Memorandum in Support. (Attachments: # 1 Appendix 1 # 2 Appendix 2 # 3 Appendix 3 # 4 Appendix 4 # 5 Appendix 5 # 6 Appendix 6 # 7 Appendix 7 # 8 Appendix 8 # 9 Appendix 9 # 10 Appendix10 # 11 Appendix 11 # 12 Appendix 12 # 13 Appendix 13 # 14 Appendix 14 # 15 Appendix 15 # 16 Appendix 16 # 17 Appendix 17 # 18 Appendix 18 # 19 Appendix 19 # 20 Appendix 20 # 21 Appendix 21# 22 Appendix 22 # 23 Appendix 23 # 24 Appendix 24 # 25 Appendix 25 # 26 Appendix 26 # 27 Appendix 27 # 28 Appendix 28) (Annable, Zachery) Modified linkage and text on 5/20/2021 (mjr). (Entered:05/19/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #24 ON 05/19/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
Vol. 7  001196	7	9/29/21	26	(7 pgs; 2 docs) MOTION to Dismiss Complaint filed by Highland Capital Management LP (Attachments: # 1 Exhibit(s) A--Proposed Order) (Annable, Zachery) Modified text on 5/28/2021 (jmg).(Entered: 05/27/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #26 ON 05/27/2021 IN U.S.DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)

Vol. 7 001203 thru Vol. 8	8	9/29/21	28	(508 pgs; 14 docs) Appendix in Support filed by Highland Capital Management LP (Attachments: # 1 Appendix 1 # 2 Appendix 2 # 3 Appendix 3 # 4 Appendix 4 # 5 Appendix 5 # 6 Appendix 6 # 7 Appendix 7 # 8 Appendix 8 # 9 Appendix 9 # 10 Appendix 10 # 11 Appendix 11 # 12 Appendix 12 # 13 Appendix 13) (Annable, Zachery) (Entered: 05/27/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #28 ON 05/27/2021 IN U.S. DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
Vol. 9 001711	9	9/29/21	33	(1 pg) Amended Civil Cover Sheet by CLO Holdco Ltd, Charitable DAF Fund LP. Amendment to 2 Supplemental Document. (Sbaiti, Mazin) Modified text on 6/23/2021 (mjr). (Entered: 06/22/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #33 ON 06/22/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001712	10	9/29/21	36	(26 pgs) RESPONSE filed by CLO Holdco Ltd, Charitable DAF Fund LP re: 22 MOTION for an Order to Enforce the Order of Reference (Sbaiti, Mazin) (Entered: 06/29/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #36 ON 06/29/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001738	11	9/29/21	37	(22 pgs) Appendix in Support filed by CLO Holdco Ltd, Charitable DAF Fund LP re 36 Response/Objection Response to Motion for an Order to Enforce the Order of Reference (Sbaiti, Mazin) (Entered: 06/29/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #37 ON 06/29/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001760	12	9/29/21	38	(45 pgs) RESPONSE filed by CLO Holdco Ltd, Charitable DAF Fund LP re: 26 MOTION to Dismiss (Defendant Highland Capital Management, L.P.'s Motion to Dismiss Complaint) (Sbaiti, Mazin) (Entered: 06/29/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #38 ON 06/29/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001805	13	9/29/21	39	(88 pgs) Appendix in Support filed by CLO Holdco Ltd, Charitable DAF Fund LP re 38 Response/Objection to Defendant Highland Capital Management, L.P.'s Motion to Dismiss Complaint (Sbaiti, Mazin) (Entered: 06/29/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #39 ON 06/29/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001893	14	9/29/21	42	(12 pgs) REPLY filed by Highland Capital Management LP re: 22 MOTION for an Order to Enforce the Order of Reference (Annable, Zachery) (Entered: 07/13/2021) [ORIGINALLY FILED IN 21-CV-0842AS #42 ON 07/13/2021 IN U.S.



			DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
VOL. 9	15	9/29/21	43 (852 pgs) Appendix in Support filed by Highland Capital Management LP re: 42 Reply. (Annable, Zachery) Modified text on 7/14/2021 (mjr). (Entered: 07/13/2021) [ORIGINALLY FILED IN 21-CV-0842AS #43 ON 07/13/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001905 thru Vol. 13	16	9/29/21	45 (21 pgs) REPLY filed by Highland Capital Management LP re: 26 MOTION to Dismiss (Defendant Highland Capital Management, L.P.'s Motion to Dismiss Complaint) (Annable, Zachery) (Entered: 07/13/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #44 ON 07/13/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
002757	17	9/29/21	57 (7 pgs; 2 docs) MOTION to Dismiss and Joinder in Motion to Dismiss of Highland Capital Management, L.P. filed by Highland CLO Funding Ltd. (Attachments: # 1 Proposed Order) Attorney Paul R Bessette added to party Highland CLO Funding Ltd (pty:dft) (Bessette, Paul) (Entered: 08/30/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #57 ON 08/30/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
002778	18	9/29/23	58 (12 pgs) Brief/Memorandum in Support filed by Highland CLO Funding Ltd. re 57 MOTION to Dismiss and Joinder in Motion to Dismiss of Highland Capital Management, L.P. (Bessette, Paul) (Entered: 08/30/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #58 ON 08/30/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
002785	19	9/29/23	59 (80 pgs; 5 docs) Appendix in Support filed by Highland CLO Funding Ltd re 58 Brief/Memorandum in Support of Motion (Attachments: # 1 Exhibit(s) A - Jackson v Dear # 2 Exhibit(s) B - Prudential Assurance v. Newman # 3 Exhibit(s) C - Harbourvest Settlement Agreement # 4 Exhibit(s) D - Boleat Declaration) (Bessette, Paul) (Entered: 08/30/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #59 ON 08/30/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
002797	20	9/29/21	64 (1 pg) ORDER OF REFERENCE: Pursuant to 28 U.S.C. § 157 and this District's Miscellaneous Order No. 33, this case is hereby REFERRED to Judge Stacey G. C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, to be adjudicated as a matter related to the consolidated Chapter 11 Bankruptcy of Highland Capital Management, L.P., Chapter 11 Case No.19-34054. (Ordered by Judge Jane J. Boyle
002877			

Vol. 14				on 9/20/2021) (svc) (Entered: 09/20/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #64 ON 09/20/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
002878	21	10/19/21	66	(5 pgs) Notice of hearing filed by Defendant Highland Capital Management, LP (RE: related document(s) 26 Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, LP, 47 Motion to strike document filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd., 55 Motion to abate filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.) Hearing to be held on 11/23/2021 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for 26 and for 47 and for 55, (Annable, Zachery)
002883 thru Vol. 16	22	11/22/21	71	(509 pgs; 2 docs) Witness and Exhibit List <i>for Hearing on November 23, 2021</i> filed by Defendant Highland Capital Management, LP (RE: related document(s) 26 Motion to dismiss adversary proceeding). (Attachments: # 1 Exhibits 1-13) (Hayward, Melissa)
Vol. 17	23	11/22/21	72	(2 pgs) Witness List filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 26 Motion to dismiss adversary proceeding, 47 Motion to strike (related document(s): 43 Document), 55 Motion to abate (related document(s) 1 Complaint), 69 Motion to abate <i>Plaintiffs' Amended Motion to Stay All Proceedings</i> (related document(s) 55 Motion to abate (related document(s) 1 Complaint))). (Sbaiti, Mazin)
003392				
003394	24	11/22/21	73	(189 pgs; 4 docs) Exhibit List <i>for November 23, 2021 hearing</i> filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 47 Motion to strike (related document(s): 43 Document), 55 Motion to abate (related document(s) 1 Complaint)). (Attachments: # 1 Exhibit 1_Defendant's Memorandum of Law in Support of Motion for Reconsideration # 2 Exhibit 2_Highland Memorandum in Support of Motion to Dismiss # 3 Exhibit 3_Order (I) Confirming Fifth Amended Plan of Reorganization of Highland) (Sbaiti, Mazin)
003583	25	12/7/21	80	(2 pgs) Order granting Highland CLO Funding, Ltd.'s motion to dismiss adversary as a party with prejudice (related document 57) Entered on 12/7/2021. (Okafor, Marcey) Modified text on 3/11/2022 (Okafor, Marcey).
003585	26	3/11/22	99	(26 pgs) Memorandum of Opinion and order granting motion to dismiss the adversary proceeding (RE: related document(s) 26 Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, LP). Entered on 3/11/2022 (Okafor, Marcey)
003611	27	3/11/22	100	(26 pgs) Order granting motion to dismiss adversary proceeding with prejudice (related document #26) Entered on 3/11/2022. (Okafor, Marcey)

Vol. 18 003637	28	3/21/22	104	(29 pgs) Notice of appeal. Fee Amount \$298 filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 100 Order on motion to dismiss adversary proceeding). Appellant Designation due by 04/4/2022. (Sbaiti, Mazin)
003666	29	5/26/22	120	(177 pgs; 2 docs) Support/supplemental document <i>Motion to Supplement Appellate Record</i> filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 111 Appellant designation). (Attachments: # 1 Amended Transcript of January 14, 2021 Hearing) (Sbaiti, Mazin)
003843	30	6/9/22	121	(1 pg) DISTRICT COURT Order: Case 3:22-00695-B is hereby transferred to the docket of the Honorable Judge Jane J. Boyle for consolidation with The Charitable DAF Fund LP, et al. v. Highland Capital Management LP, Case No. 3:21-cv-3129-N. Judge Karen Gren Scholer no longer assigned to case.(RE: related document(s) 86 Notice of appeal filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd., 104 Notice of appeal filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.). Entered on 6/9/2022 (Whitaker, Sheniqua) (Entered: 06/10/2022)
003844	31	10/24/22	122	(7 pgs) Motion to dismiss adversary proceeding ( <i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i> ) filed by Defendant Highland Capital Management, LP (Annable, Zachery)
003851	32	10/14/22	123	(31 pgs) Brief in support filed by Defendant Highland Capital Management, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding ( <i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i> )). (Annable, Zachery)
Vol. 19 003882 Thru Vol 20	33	10/14/22	124	(513 pgs; 15 docs) Support/supplemental document ( <i>Appendix in Support of Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i> ) filed by Defendant Highland Capital Management, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding ( <i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i> )). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14) (Annable, Zachery)
Vol. 21 004395	34	10/27/22	126	(5 pgs) Notice of hearing ( <i>Notice of Hearing and Briefing Schedule on Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i> ) filed by Defendant Highland Capital Management, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, LP). Hearing to be held on 12/8/2022 at 09:30 AM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for 122. (Annable, Zachery)



Vol. 21 004400  004410  004442 Thru Vol. 22	35	11/18/22	128	(10 pgs) Motion for withdrawal of reference. Fee amount \$188, filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (Sbaiti, Mazin)
	36	11/18/22	129	(32 pgs) Response opposed to (related document(s): 122 Motion to dismiss adversary proceeding ( <i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i> ) filed by Defendant Highland Capital Management, LP) filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP. (Sbaiti, Mazin)
	37	11/18/22	130	(254 pgs; 2 docs) Response opposed to (related document(s): 122 Motion to dismiss adversary proceeding ( <i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i> ) filed by Defendant Highland Capital Management, LP) filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP. (Attachments: # 1 Appendix) (Sbaiti, Mazin)
Vol. 22 004696  004717  004732  004737  004742	38	9/2/22	131	(21 pgs) DISTRICT COURT MEMORANDUM OPINION AND ORDER: The Court REVERSES and REMANDS the bankruptcy court's Motion to Dismiss Order and AFFIRMS the bankruptcy courts Motion to Stay Order. re: appeal on Civil Action number: Case 3:22-00695-B consolidated with 3:21-CV-3129-B, (RE: related document(s) 81 Order on motion to abate, 100 Order on motion to dismiss adversary proceeding). Entered on 9/2/2022 (Whitaker, Sheniqua) (Entered: 11/29/2022)
	39	12/2/22	133	(15 pgs) Reply to (related document(s): 129 Response filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd., 130 Response filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.) filed by Defendant Highland Capital Management, LP. (Annable, Zachery)
	40	12/7/22	135	(5 pgs) Notice of hearing filed by Defendant Highland Capital Management, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, LP). Hearing to be held on 1/25/2023 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> for 122, (Annable, Zachery)
	41	12/7/22	136	(5 pgs) Notice of hearing filed by Defendant Highland Capital Management, LP (RE: related document(s) 128 Motion for withdrawal of reference filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.). Status Conference to be held on 1/25/2023 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> . (Annable, Zachery).
	42	12/9/22	138	(3 pgs) Response opposed to (related document(s): 128 Motion for withdrawal of reference. Fee amount \$188, filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.) filed by Defendant Highland Capital Management, LP. (Annable, Zachery)

Vol. 22 004745	43	12/9/22	139	(25 pgs) Brief in support filed by Defendant Highland Capital Management, LP (RE: related document(s) 138 Response). (Annable, Zachery)
Vol. 23 004770	44	12/9/22	140	(280 pgs; 8 docs) Support/supplemental document ( <i>Appendix in Support of Highland Capital Management, L.P.'s Response to Renewed Motion to Withdraw the Reference</i> ) filed by Defendant Highland Capital Management, LP (RE: related document(s) 138 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7) (Annable, Zachery)
Vol. 24 005050	45	12/16/22	144	(6 pgs) Reply to (related document(s): 138 Response filed by Defendant Highland Capital Management, LP) filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP. (Sbaiti, Mazin)
005056 Thru Vol. 25.	46	1/23/23	145	(514 pgs; 15 docs) Witness and Exhibit List filed by Defendant Highland Capital Management, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding ( <i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i> )). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14) (Annable, Zachery)
Vol. 26 005570	47	1/23/23	146	(280 pgs; 8 docs) Witness and Exhibit List filed by Defendant Highland Capital Management, LP (RE: related document(s) 128 Motion for withdrawal of reference. Fee amount \$188.). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7) (Annable, Zachery)
Vol. 27 005850	48	1/23/23	147	(221 pgs; 7 docs) Witness and Exhibit List filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding ( <i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i> )). (Attachments: # 1 Exhibit 1_Excerpts from July 14, 2020 Hearing Transcript # 2 Exhibit 2_HCLOF Members Agreement Relating to the Company # 3 Exhibit 3_HarbourVest Settlement Agreement # 4 Exhibit 4_Order Approving Debtor's Settlement with HarbourVest # 5 Exhibit 5_HCLOF Offering # 6 Exhibit 6 Amended and Restated Investment Advisory Agreement) (Sbaiti, Mazin)
006071	49	1/23/23	148	(3 pgs) Witness and Exhibit List filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 128 Motion for withdrawal of reference. Fee amount \$188.). (Phillips, Louis)
Vol. 28 006074	50	1/25/23	150	(56 pgs; 2 docs) Amended Witness and Exhibit List filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 147 List (witness/exhibit/generic), 149 List (witness/exhibit/generic)). (Attachments: # 1 Exh 7_Testimony of Mark Patrick at June 8, 2021 hearing) (Sbaiti, Mazin)

Vol. 28 006130	51	1/25/23	152	(3 pgs) Notice of Appearance and Request for Notice by Louis M. Phillips filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP. (Phillips, Louis)
	52	1/25/23	154	(1 pg) Court admitted exhibits date of hearing January 25, 2023 (RE: related document(s) 128 Motion for withdrawal of reference, filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.) (COURT ADMITTED DEFENDANT'S EXHIBITS #1, #2, #3, #4, #5 & #6 OFFERED BY ATTY GREG DEMO). (Edmond, Michael) (Entered: 01/27/2023)
Vol. 32 006925  006942  006960	53	2/6/23	158	Report and recommendation to the U.S. District Court by U.S. Bankruptcy Judge. (RE: related document(s) 128 Motion for withdrawal of reference filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.). Entered on 2/6/2023 (Okafor, Marcey)
	54	2/6/23	161	(18 pgs) DISTRICT COURT Notice of transmission of report and recommendation in re: renewed motion to withdraw reference. Civil Case # 3:22-cv-02802-S. (RE: related document(s) 158 Report and recommendation to the U.S. District Court by U.S. Bankruptcy Judge. (RE: related document(s) 128 Motion for withdrawal of reference filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.). Entered on 2/6/2023) (Whitaker, Sheniqua)
	55	4/3/23	165	(1 pg) DISTRICT COURT ORDER: The Court GRANTS the 11 Joint Motion to Transfer Proceeding and Consolidate Before Original Court and the above-numbered case (3:22-cv-02802-S) is transferred to the docket of the Honorable Judge Jane Boyle: Civil case 3:21-cv-00842-B (order referring case). (RE: related document(s) 1 Complaint filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd., 143 Notice of transmission of motion to withdraw reference). Entered on 4/3/2023 (Whitaker, Sheniqua) Modified on 4/10/2023 (Whitaker, Sheniqua). (Entered: 04/10/2023)

#### TRANSCRIPTS

006961	56	11/24/21	78	(104 pgs) Transcript regarding Hearing Held 11-23-2021 RE: Motion Hearing. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 02/22/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Liberty Transcripts/Dipti Patel, Telephone number 847-848-4907. (RE: related document(s) 75 Hearing held on 11/23/2021. (RE: related document(s) 55 MOTION to Stay filed by CLO Holdco Ltd, Charitable DAF Fund LP (Sbaiti, Mazin) (Entered: 08/26/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #55 ON 08/26/2021 IN U.S.
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			<p>DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)) (Appearances: J. Pomerantz and J. Morris for Highland Defendants; J. Jordan and P. Bessett for HCLOF; M. Sbaiti for Plaintiffs. Nonevidentiary hearing. Motion denied. Mr. Pomerantz to upload order.), 76 Hearing held on 11/23/2021. (RE: related document(s) 47 Motion to strike 43 Appendix in support filed by CLO Holdco, Ltd., Charitable DAF Fund, LP (Bridges, Jonathan) Modified text on 7/16/2021 (mjr). (Entered: 07/15/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #47 ON 07/15/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)) (Appearances: J. Pomerantz and J. Morris for Highland Defendants; J. Jordan and P. Bessett for HCLOF; M. Sbaiti for Plaintiffs. Nonevidentiary hearing. Motion denied (Plaintiffs acknowledged complained-of Appendices it did not relate to Motion to Dismiss). Mr. Pomerantz to upload order.)). Transcript to be made available to the public on 02/22/2022. (Patel, Dipti)</p>
57	2/21/23	164	<p>164 (112 pgs) Transcript regarding Hearing Held 1/25/23 RE: HEARING ON DEFENDANT HIGHLAND CAPITAL MANAGEMENT L.P.'S RENEWED MOTION TO DISMISS COMPLAINT (122) AND STATUS CONFERENCE RE: MOTION FOR WITHDRAWAL OF REFERENCE FILED BY PLAINTIFF CLO HOLDCO, LTD., PLAINTIFF CHARITABLE DAF FUND, LP (128). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/22/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Dipti Patel, Telephone number 847-848-4907. (RE: related document(s) 155 Hearing held on 1/25/2023. (RE: related document(s) 122 Motion to dismiss adversary proceeding, (Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint) filed by Defendant Highland Capital Management, LP filed by Defendant Highland Capital Management, LP) (Appearances: J. Morris and G. Demo for Movants; L. Phillips and M. Sbaiti for Plaintiffs. Evidentiary hearing (appendices). Court took matter under advisement.), 156 Hearing held on 1/25/2023. (RE: related document(s) 128 Motion for withdrawal of reference. Fee amount \$188, filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.) (Appearances: J. Morris and G. Demo for Movants; L. Phillips and M. Sbaiti for Plaintiffs. Evidentiary hearing (appendices). Court announced it will recommend denial to District Court. Court is working on Report &amp; Recommendation.)). Transcript to be made available to the public on 05/22/2023. (Patel, Dipti)</p>



Dated: July 14, 2023

Respectfully submitted,

**SBAITI & COMPANY PLLC**

/s/ Mazin A. Sbaiti

**Mazin A. Sbaiti**

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**Counsel for Appellants**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 14<sup>th</sup> day of July, 2023.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti



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*Counsel for Charitable DAF Fund, L.P.  
and CLO Holdco, Ltd.*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
	§	
CHARITABLE DAF FUND, L.P. AND CLO	§	
HOLDCO, LTD., DIRECTLY AND DERIVATIVELY	§	
	§	
Plaintiffs,	§	Adversary Proceeding No.
	§	
vs.	§	21-03067-sgj
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
HIGHLAND HCF ADVISOR, LTD., AND	§	
HIGHLAND CLO FUNDING LTD., NOMINALLY	§	
	§	
Defendants.	§	
	§	

**REPLY IN SUPPORT OF RENEWED MOTION TO WITHDRAW REFERENCE**

Plaintiffs The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. respectfully submit this  
Reply in support of their Renewed Motion to Withdraw the Reference as follows:

In its response brief, Defendant Highland Capital Management, L.P. does not dispute that Plaintiffs first moved to withdraw the reference under 28 U.S.C. § 157(d) on June 29, 2021 (Dkt. 36), in the district court, or that the district court referred the entire action to this Court without addressing the merits of that motion. It merely argues that Plaintiffs should have re-urged their motion sooner. This Court's statutory jurisdiction is not so easily established.

Neither does the response brief dispute that Plaintiffs' pending claims "require[] consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce," as § 157(d) requires. It only questions the complexity of the laws at issue and contends that this Court has sufficient experience to consider them. These arguments do not undo § 157(d)'s jurisdictional bar. Plaintiffs' motion should be granted.

#### **A. Plaintiffs Have Not Waived Jurisdiction**

At the outset of this action, Plaintiffs asserted that this Court lacked jurisdiction under § 157(d). Motion for Leave to File First Amended Complaint, 6-7 (Dkt. 6). Plaintiffs moved to withdraw the reference shortly thereafter in their Response and Cross Motion on June 29, 2021 (Dkt. 36). Plaintiffs have maintained this position consistently in repeated filings. Plaintiffs' Amended Motion to Stay All Proceedings, Exhibit A, Proposed Motion to Withdraw Reference (Dkt. 60-1); Renewed Motion to Withdraw Reference (Dkt. 128). The timing of the re-urging of Plaintiffs' motion cannot create jurisdiction where there is none.

The plain language of § 157(d) mandates withdrawal of the reference following a timely motion. There is no additional requirement that a party must repeat its objection to the authority of the Bankruptcy Court through a re-urged or renewed motion to withdraw reference according to a particular timeframe. And Highland points to no authority indicating otherwise.

Highland attempts to bolster its waiver argument with reference to Rule 7012(b) of the Federal Rules of Bankruptcy Procedure. But that rule, by its own terms, applies only to responsive pleadings. “Pleading” is a term of art in the Federal Rules, and what can constitute a pleading is enumerated exhaustively in Rule 7(a) of the Federal Rules of Civil Procedure, made applicable by Rule 7007, FRBP. *See* Fed. R. Civ. P. 7(a) (“Pleadings. Only these pleadings are allowed: (1) a complaint; (2) an answer to a complaint; (3) an answer to a counterclaim designated as a counterclaim; (4) an answer to a crossclaim; (5) a third-party complaint; (6) an answer to a third-party complaint; and (7) if the court orders one, a reply to an answer.”) Plaintiffs have filed none of the above except for their Original Complaint, which is certainly not a “responsive” pleading. Rule 7012(b) therefore does not apply.<sup>1</sup>

Because Plaintiffs’ June 29, 2021 motion was timely, and because subject matter jurisdiction cannot be established by waiver, Highland’s principal argument against withdrawal of the reference fails.

#### **B. Plaintiffs Have Established That Consideration of the Advisers Act Is Necessary**

Plaintiffs have established—and Highland does not dispute—that withdrawal of the reference is mandatory under § 157(d) when a federal law, such as the Advisers Act, must be considered. Renewed Motion to Withdraw the Reference [Dkt. 128] at 2-3. Highland likewise does not dispute that resolving its pending Renewed Motion to Dismiss will require analysis of the Advisers Act. Instead, Highland argues only that such analysis will be simple and immaterial. This is incorrect.

---

<sup>1</sup> If the Renewed Motion has triggered a contested matter, under Rule 9014 of the Rules of Bankruptcy Procedure, it is clear that Rule 7012 is not applicable (“(c) Application of Part VII Rules. Except as otherwise provided in this rule, and unless the court directs otherwise, the following rules shall apply: 7009, 7017, 7021, 7025, 7026, 7028–7037, 7041, 7042, 7052, 7054–7056, 7064, 7069, and 7071.”).

As Plaintiffs demonstrated in their opening brief, the likelihood of anything more than simple application of federal securities laws is sufficient to trigger mandatory withdrawal under § 157(d). *See In re Harrah's Entm't*, No. 95-3925, 1996 U.S. Dist. LEXIS 18097, at \*7-8 (E.D. La. 1996) (rejecting argument that the case would “only involve the simple application of established federal securities laws” where plaintiff alleged violation of such laws and was attempting “to hold defendants directly liable and secondarily liable based on a ‘controlling person’ theory for certain acts and omissions”); *id.* at \*7-8, 11 (concluding, “This federal securities litigation involves more than simple application of federal securities laws and will be complicated enough to warrant mandatory withdrawal under § 157(d),” and citing *In re Rands Res.*, 175 B.R. 393, 396 (D. Nev. 1994), for the proposition that withdrawal of the reference is mandatory where resolution requires more than simple application of federal securities laws); *In re Continental Airlines Corp.*, 50 B.R. 342, 360 (S.D. Tex. 1985), *aff'd*, 790 F.2d 35 (5th Cir. 1986) (“While that second clause [of § 157(d)] might not apply when some ‘other law’ only tangentially affects the proceeding, it surely does apply when federal labor legislation will likely be material to the proceeding’s resolution.”).

That more than simple application of the Advisers Act is required is amply demonstrated by the parties’ briefing of the pending Renewed Motion to Dismiss Complaint, which Plaintiffs incorporate by reference here. *See e.g.*, Plaintiffs’ Response to Renewed Motion to Dismiss Complaint [Dkt. 129] at 12-13 & n.3 (explaining the viability of an action for breach of fiduciary duties imposed by the Adviser Act and explaining Highland’s inability to circumvent those duties via the internal-affairs doctrine); *id.* at 14-15 & n.4 (invoking Rule 206(4)-8, promulgated under 17 C.F.R. § 275.206(4)-8, as governing the duties owed by advisors to “pooled investment vehicles” and explaining how Highland qualifies as such).

Neither does Highland’s specious core-jurisdiction argument save the day, as the mandatory withdrawal provisions of § 157(d) apply even to matters within a bankruptcy court’s core jurisdiction. *See, e.g., In re Bos. Generating, LLC*, No. 10-cv-6528, 2010 U.S. Dist. LEXIS 116073, at \*14–15 (S.D.N.Y. Nov. 1, 2010) (quoting *New York v. Exxon Corp.*, 932 F.2d 1020, 1026 (2d Cir. 1991) for the proposition, “[M]atters within [the bankruptcy court’s ‘core’ jurisdiction, upon timely motion, must be withdrawn under § 157(d) if they require the bankruptcy court to substantially interpret federal statutes which affect interstate commerce.”) (alterations in original); *cf. Stern v. Marshall*, 564 U.S. 462, 499 (2011) (holding that Congress cannot bypass Article III and create jurisdiction in bankruptcy court “simply because a proceeding may have some bearing on a bankruptcy case”); *In re Prescription Home Health Care*, 316 F.3d 542, 548 (5th Cir. 2002) (rejecting “the theory that a bankruptcy court has jurisdiction to enjoin any activity that threatens the debtor’s reorganization prospects”).

Because the resolution of this case—indeed, the resolution of the pending Renewed Motion to Dismiss—will require consideration of federal securities law, withdrawal of the reference is mandatory.

### **CONCLUSION**

For all these reasons, Plaintiffs respectfully submit that the motion should be granted.



Dated: December 16, 2022

Respectfully submitted,

**SBAITI & COMPANY PLLC**

/s/ Jonathan Bridges

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*Counsel for Highland Capital Management, L.P.*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:	)	
	)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
Reorganized Debtor.	)	
In re: CHARITABLE DAF FUND, L.P., AND	)	
CLO HOLDCO LTD.,	)	Adv. Pro. No. 21-03067-sgj
Plaintiffs,	)	
vs.	)	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	
HIGHLAND HCF ADVISOR, LTD., AND	)	
HIGHLAND CLO FUNDING, LTD.,	)	
Defendants	)	

<sup>1</sup> The Reorganized Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

**REORGANIZED DEBTOR’S WITNESS AND EXHIBIT LIST WITH  
RESPECT TO EVIDENTIARY HEARING TO BE HELD ON JANUARY 25, 2023**

Highland Capital Management, L.P. (the “Debtor”) submits the following witness and exhibit list with respect to *Defendant Highland Capital Management, L.P.’s Renewed Motion to Dismiss Complaint* [Docket No. 122], which the Court has set for hearing at 1:30 p.m. (Central Time) on January 25, 2023 (the “Hearing”) in the above-styled adversary proceeding (the “Adversary Proceeding”).

**A. Witnesses:**

1. Any witness identified by or called by any other party; and
2. Any witness necessary for rebuttal.

**Exhibits:**

Number	Exhibit	Offered	Admitted
1.	HarbourVest 2017 Global Fund L.P. Proof of Claim No. 143, HarbourVest 2017 Global AIF L.P., Proof of Claim No. 147, HarbourVest Dover Street IX Investment L.P., Proof of Claim No. 150, HV International VIII Secondary L.P., Proof of Claim No. 153, HarbourVest Skew Base AIF L.P., Proof of Claim No. 154, and HarbourVest Partners L.P., Proof of Claim No. 149.		
2.	<i>Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> [Bankr. Docket No. 1625]		
3.	<i>Settlement Agreement and Transfer Agreement for Ordinary Shares of Highland CLO Funding, Ltd.</i> [Bankr. Docket No. 1631-1]		
4.	<i>James Dondero’s Objection to the Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest</i> [Bankr. Docket No. 1697]		
5.	<i>The Dugaboy Investment Trust and Get Good Trust’s Objection to the Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> [Bankr. Docket No. 1706]		
6.	<i>CLO Holdco, Ltd.’s Objection to HarbourVest Settlement</i> [Bankr. Docket No. 1707]		

Number	Exhibit	Offered	Admitted
7.	Deposition Transcript of Michael Pugatch, January 21, 2021		
8.	<i>Debtor's Omnibus Reply in Support of Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> [Bankr. Docket No. 1731]		
9.	Hearing Transcript, January 14, 2021		
10.	<i>Order Approving Debtor's Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith</i> [Bankr. Docket No. 1788]		
11.	<i>Original Complaint</i> , Case No. 21-cv-00842-B, Docket No. 1 (N.D. Tex. Apr. 12, 2021)		
12.	<i>Memorandum Opinion and Order</i> , Case No. 21-cv-03129-B, Docket No. 28 (N.D. Tex. September 2, 2021)		
13.	Members Agreement, November 15, 2017		
14.	Second Amended and Restated Investment Advisory Agreement		

Dated: January 23, 2023

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-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

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Fax: (972) 755-7110

*Counsel for Highland Capital Management, L.P.*



## EXHIBIT 1

005060

## CLAIM 143

005061

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
(State)

Case number 19-34054

## Official Form 410 Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to **11 U.S.C. § 503**.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents**; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. **18 U.S.C. §§ 152, 157, and 3571.**

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

### Part 1: Identify the Claim

1. Who is the current creditor?	<u>HarbourVest 2017 Global Fund L.P.</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	<b>Where should notices to the creditor be sent?</b>  <u>HarbourVest 2017 Global Fund L.P.</u> <u>Attn: Erica Weisgerber</u> <u>Debevoise and Plimpton LLP</u> <u>919 Third Avenue</u> <u>New York, NY 10022, U.S.A.</u>  Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	<b>Where should payments to the creditor be sent? (if different)</b>  <u>See summary page</u>  Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____
7. How much is the claim? \$ <u>See Annex</u>	Does this amount include interest or other charges? <input type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.  <u>See Annex</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. <b>Nature or property:</b> <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____  <b>Basis for perfection:</b> _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  <b>Value of property:</b> \$ _____ <b>Amount of the claim that is secured:</b> \$ _____ <b>Amount of the claim that is unsecured:</b> \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)  <b>Amount necessary to cure any default as of the date of the petition:</b> \$ _____  <b>Annual Interest Rate</b> (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____



<p>12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?</p> <p>A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Check all that apply:</p> <p><input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). \$ _____</p> <p><input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). \$ _____</p> <p><input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650* earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). \$ _____</p> <p><input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). \$ _____</p> <p><input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). \$ _____</p> <p><input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies. \$ _____</p> <p>* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.</p>	<p><b>Amount entitled to priority</b></p>
<p>13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.</p> <p>\$ _____</p>	

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- ☐ I am the creditor.
- ☒ I am the creditor's attorney or authorized agent.
- ☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- ☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director - Company: HarbourVest 2017 Global Fund L.P., by Harbo

Company by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LL  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone \_\_\_\_\_ Email \_\_\_\_\_





For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest 2017 Global Fund L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest 2017 Global Fund L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex	<b>Includes Interest or Charges:</b> None	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 4:40:16 p.m. Eastern Time <b>Title:</b> Managing Director - Company: HarbourVest 2017 Global Fund L.P., by HarbourVest 2017 Global Associates L.P., its Gen Partner <b>Company:</b> by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member		

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest 2017 Global Fund L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”)* [Case No. 18-30264 (SGJ), **Dkt. No. 118**]. As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”)* [Case No. 18-30264 (SGJ), **Dkt. No 827**] and related filings in the Acis

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), **Dkt. No. 157**].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that **28 U.S.C. § 157(b)(2)(C)** is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*



## CLAIM 147

005071

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
(State)

Case number 19-34054

Official Form 410  
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to **11 U.S.C. § 503**.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents**; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. **18 U.S.C. §§ 152, 157, and 3571**.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>HarbourVest 2017 Global AIF L.P.</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	<b>Where should notices to the creditor be sent?</b>  <u>HarbourVest 2017 Global AIF L.P.</u> <u>Attn: Erica Weisgerber</u> <u>Debevoise and Plimpton LLP</u> <u>919 Third Avenue</u> <u>New York, NY 10022, U.S.A.</u>  Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>  Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	<b>Where should payments to the creditor be sent? (if different)</b>  <u>See summary page</u>  Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____
7. How much is the claim? \$ <u>See Annex</u>	Does this amount include interest or other charges? <input type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.  <u>See Annex</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. <b>Nature or property:</b> <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____  <b>Basis for perfection:</b> _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  <b>Value of property:</b> \$ _____ <b>Amount of the claim that is secured:</b> \$ _____ <b>Amount of the claim that is unsecured:</b> \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)  <b>Amount necessary to cure any default as of the date of the petition:</b> \$ _____  <b>Annual Interest Rate</b> (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____



<p>12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?</p> <p>A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Check all that apply:</p> <p><input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). \$ _____</p> <p><input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). \$ _____</p> <p><input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). \$ _____</p> <p><input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). \$ _____</p> <p><input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). \$ _____</p> <p><input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies. \$ _____</p> <p>* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.</p>	<p><b>Amount entitled to priority</b></p>
<p>13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.</p> <p>\$ _____</p>	

**Part 3: Sign Below**

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- ☐ I am the creditor.
- ☒ I am the creditor's attorney or authorized agent.
- ☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- ☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020  
MM / DD / YYYY

/s/Michael Pugatch  
Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch  
First name Middle name Last name

Title Managing Director-Company: HarbourVest 2017 Global AIF L.P., by HarbourV

Company Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investme  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone \_\_\_\_\_ Email \_\_\_\_\_



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest 2017 Global AIF L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest 2017 Global AIF L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex	<b>Includes Interest or Charges:</b> None	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 4:49:59 p.m. Eastern Time <b>Title:</b> Managing Director-Company: HarbourVest 2017 Global AIF L.P., by HarbourVest Partners Ireland Limited, its Alternative <b>Company:</b> Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its Gen Ptr		

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest 2017 Global AIF L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”)* [Case No. 18-30264 (SGJ), **Dkt. No. 118**]. As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”)* [Case No. 18-30264 (SGJ), **Dkt. No 827**] and related filings in the Acis

005076



bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), **Dkt. No. 157**].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that **28 U.S.C. § 157(b)(2)(C)** is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

## CLAIM 150

005081

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
(State)

Case number 19-34054

Official Form 410  
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to **11 U.S.C. § 503**.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents**; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. **18 U.S.C. §§ 152, 157, and 3571.**

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>HarbourVest Dover Street IX Investment L.P.</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	<b>Where should notices to the creditor be sent?</b> See summary page	<b>Where should payments to the creditor be sent? (if different)</b> See summary page
<b>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</b>		
	Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	





**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____
7. How much is the claim? \$ <u>See Annex</u>	Does this amount include interest or other charges? <input type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.  <u>See Annex</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. <b>Nature or property:</b> <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____  <b>Basis for perfection:</b> _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  <b>Value of property:</b> \$ _____ <b>Amount of the claim that is secured:</b> \$ _____ <b>Amount of the claim that is unsecured:</b> \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)  <b>Amount necessary to cure any default as of the date of the petition:</b> \$ _____  <b>Annual Interest Rate</b> (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☒ No

☐ Yes. Check all that apply:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

\$ \_\_\_\_\_

☐ Up to \$3,025\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ \_\_\_\_\_

☐ Wages, salaries, or commissions (up to \$13,650\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ \_\_\_\_\_

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ \_\_\_\_\_

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ \_\_\_\_\_

☐ Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

☒ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

### Part 3: Sign Below

The person completing this proof of claim must sign and date it.

FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both.

18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020

MM / DD / YYYY

/s/Michael Pugatch

Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch

First name

Middle name

Last name

Title Managing Director-Company: HarbourVest Dover Street IX Investment L.P.,

Company Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investme  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone

Email



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest Dover Street IX Investment L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest Dover Street IX Investment L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex	<b>Includes Interest or Charges:</b> None	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 4:59:00 p.m. Eastern Time <b>Title:</b> Managing Director-Company: HarbourVest Dover Street IX Investment L.P., by HarbourVest Partners Ireland Limited, its Alter <b>Company:</b> Inv Fund Mgr, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its Gen Ptr		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Dover Street IX Investment L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”)* [Case No. 18-30264 (SGJ), **Dkt. No. 118**]. As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”)* [Case No. 18-30264 (SGJ), **Dkt. No 827**] and related filings in the Acis

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that **28 U.S.C. § 157(b)(2)(C)** is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,



as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

## CLAIM 153

005091

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
(State)

Case number 19-34054

Official Form 410  
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to **11 U.S.C. § 503**.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents**; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. **18 U.S.C. §§ 152, 157, and 3571**.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>HV International VIII Secondary L.P.</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	<b>Where should notices to the creditor be sent?</b>  <u>HV International VIII Secondary L.P.</u> <u>Attn: Erica Weisgerber</u> <u>Debevoise and Plimpton LLP</u> <u>919 Third Avenue</u> <u>New York, NY 10022, U.S.A.</u>  Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>  Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	<b>Where should payments to the creditor be sent? (if different)</b>  <u>See summary page</u>  Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____
7. How much is the claim? \$ <u>See Annex</u>	Does this amount include interest or other charges? <input type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.  <u>See Annex</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. <b>Nature or property:</b> <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____  <b>Basis for perfection:</b> _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  <b>Value of property:</b> \$ _____ <b>Amount of the claim that is secured:</b> \$ _____ <b>Amount of the claim that is unsecured:</b> \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)  <b>Amount necessary to cure any default as of the date of the petition:</b> \$ _____  <b>Annual Interest Rate</b> (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☒ No

☐ Yes. Check all that apply:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

\$ \_\_\_\_\_

☐ Up to \$3,025\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ \_\_\_\_\_

☐ Wages, salaries, or commissions (up to \$13,650\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ \_\_\_\_\_

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ \_\_\_\_\_

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ \_\_\_\_\_

☐ Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

☒ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

### Part 3: Sign Below

The person completing this proof of claim must sign and date it.

FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

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Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020

MM / DD / YYYY

/s/Michael Pugatch

Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch

First name

Middle name

Last name

Title Managing Director-Company: HV International VIII Secondary L.P., by HII

Company by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LL  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone

Email



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HV International VIII Secondary L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HV International VIII Secondary L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex	<b>Includes Interest or Charges:</b> None	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 5:16:54 p.m. Eastern Time <b>Title:</b> Managing Director-Company: HV International VIII Secondary L.P., by HIPEP VIII Associates L.P., its General Partner, <b>Company:</b> by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member		



UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

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2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition (“Involuntary Petition Ruling”)* [Case No. 18-30264 (SGJ), **Dkt. No. 118**]. As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Confirmation Ruling”)* [Case No. 18-30264 (SGJ), **Dkt. No 827**] and related filings in the Acis

bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), **Dkt. No. 157**].

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5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that **28 U.S.C. § 157(b)(2)(C)** is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or

other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

## CLAIM 154

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
(State)

Case number 19-34054

Official Form 410  
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to **11 U.S.C. § 503**.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents**; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. **18 U.S.C. §§ 152, 157, and 3571.**

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>HarbourVest Skew Base AIF L.P.</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	<b>Where should notices to the creditor be sent?</b>  <u>HarbourVest Skew Base AIF L.P.</u> <u>Attn: Erica Weisgerber</u> <u>Debevoise and Plimpton LLP</u> <u>919 Third Avenue</u> <u>New York, NY 10022, U.S.A.</u>  Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	<b>Where should payments to the creditor be sent? (if different)</b>  <u>See summary page</u>  Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	





**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____
7. How much is the claim? \$ <u>See Annex</u>	Does this amount include interest or other charges? <input type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.  <u>See Annex</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. <b>Nature or property:</b> <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____  <b>Basis for perfection:</b> _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  <b>Value of property:</b> \$ _____ <b>Amount of the claim that is secured:</b> \$ _____ <b>Amount of the claim that is unsecured:</b> \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)  <b>Amount necessary to cure any default as of the date of the petition:</b> \$ _____  <b>Annual Interest Rate</b> (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☒ No

☐ Yes. Check all that apply:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

\$ \_\_\_\_\_

☐ Up to \$3,025\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ \_\_\_\_\_

☐ Wages, salaries, or commissions (up to \$13,650\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ \_\_\_\_\_

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ \_\_\_\_\_

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ \_\_\_\_\_

☐ Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

☒ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

### Part 3: Sign Below

The person completing this proof of claim must sign and date it.

FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both.

18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020

MM / DD / YYYY

/s/Michael Pugatch

Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch

First name

Middle name

Last name

Title Managing Director-Company: HarbourVest Skew Base AIF L.P., by HarbourVest

Company Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investme  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone

Email



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest Skew Base AIF L.P. Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest Skew Base AIF L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex	<b>Includes Interest or Charges:</b> None	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 5:11:50 p.m. Eastern Time <b>Title:</b> Managing Director-Company: HarbourVest Skew Base AIF L.P., by HarbourVest Partners Ireland Limited, its Alternative Inv <b>Company:</b> Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its Gen Ptr		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Skew Base AIF L.P. (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant is a limited partner in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition* (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), **Dkt. No. 118**]. As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan* (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), **Dkt. No 827**] and related filings

in the Acis bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), Dkt. No. 157].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor's employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such

documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that **28 U.S.C. § 157(b)(2)(C)** is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor,

as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or



other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

## CLAIM 149

Fill in this information to identify the case:

Debtor Highland Capital Management, L.P.

United States Bankruptcy Court for the: Northern District of Texas  
(State)

Case number 19-34054

## Official Form 410 Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to **11 U.S.C. § 503**.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents**; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. **18 U.S.C. §§ 152, 157, and 3571.**

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

### Part 1: Identify the Claim

1. Who is the current creditor?	<u>HarbourVest Partners L.P. on behalf of funds and accounts under management</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	<b>Where should notices to the creditor be sent?</b> See summary page	<b>Where should payments to the creditor be sent? (if different)</b> See summary page
<b>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</b>		
	Contact phone <u>2129096000</u> Contact email <u>eweisgerber@debevoise.com</u>	Contact phone <u>6173483773</u> Contact email <u>agoren@harbourvest.com</u>
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____		
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____
7. How much is the claim? \$ <u>See Annex</u>	Does this amount include interest or other charges? <input type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.  <u>See Annex</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. <b>Nature or property:</b> <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____  <b>Basis for perfection:</b> _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  <b>Value of property:</b> \$ _____ <b>Amount of the claim that is secured:</b> \$ _____ <b>Amount of the claim that is unsecured:</b> \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)  <b>Amount necessary to cure any default as of the date of the petition:</b> \$ _____  <b>Annual Interest Rate</b> (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☒ No

☐ Yes. Check all that apply:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

\$ \_\_\_\_\_

☐ Up to \$3,025\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ \_\_\_\_\_

☐ Wages, salaries, or commissions (up to \$13,650\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ \_\_\_\_\_

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ \_\_\_\_\_

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ \_\_\_\_\_

☐ Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

☒ No

☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

### Part 3: Sign Below

The person completing this proof of claim must sign and date it.

FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both.

18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 04/08/2020

MM / DD / YYYY

/s/Michael Pugatch

Signature

Print the name of the person who is completing and signing this claim:

Name Michael Pugatch

First name

Middle name

Last name

Title Managing Director

Company HarbourVest Partners L.P., on behalf of funds and accounts under manage  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Contact phone

Email



For phone assistance: Domestic (877) 573-3984 | International (310) 751-1829

<b>Debtor:</b> 19-34054 - Highland Capital Management, L.P. <b>District:</b> Northern District of Texas, Dallas Division		
<b>Creditor:</b> HarbourVest Partners L.P. on behalf of funds and accounts under management Attn: Erica Weisgerber Debevoise and Plimpton LLP 919 Third Avenue New York, NY, 10022 U.S.A. <b>Phone:</b> 2129096000 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> eweisgerber@debevoise.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Disbursement/Notice Parties:</b> HarbourVest Partners L.P. c/o HarbourVest Partners, LLC One Financial Center Boston, MA, 02111 U.S.A. <b>Phone:</b> 6173483773 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> agoren@harbourvest.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See Annex	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> See Annex	<b>Includes Interest or Charges:</b> None	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> Michael Pugatch on 08-Apr-2020 5:06:59 p.m. Eastern Time <b>Title:</b> Managing Director <b>Company:</b> HarbourVest Partners L.P., on behalf of funds and accounts under management, by HarbourVest Partners, LLC, its Gen Partner		

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In re:

Highland Capital Management, L.P.

Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

**ANNEX TO PROOF OF CLAIM**

1. This annex (the “Annex”) is part of and is incorporated by reference into the attached proof of claim (together with the Annex, the “Proof of Claim”) and describes in more detail the claims of HarbourVest Partners L.P. on behalf of funds and accounts under management (the “Claimant”) against the debtor Highland Capital Management, L.P. (the “Debtor”).

2. The Claimant manages investment funds that are limited partners in one of the Debtor’s managed vehicles, Highland CLO Funding, Ltd. (“HCLOF”). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, “Acis”), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the “Court”) on January 30, 2018. The Acis bankruptcy filing resulted from a dispute between Debtor and its former employee, Joshua Terry, who served as portfolio manager for Debtor’s collateral loan obligations funds (“CLO”) business. *See, e.g., Findings of Fact and Conclusions of Law in Support of Orders for Relief Issued After Trial on Contested Involuntary Bankruptcy Petition* (“Involuntary Petition Ruling”) [Case No. 18-30264 (SGJ), **Dkt. No. 118**]. As noted in more detail in the Court’s *Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third*



*Amended Joint Plan* (“Confirmation Ruling”) [Case No. 18-30264 (SGJ), **Dkt. No 827**] and related filings in the Acis bankruptcy cases, there has been extensive litigation regarding alleged improper conduct associated with the management of, and transactions relating to, Acis, including transactions with and related to HCLOF. *See, e.g., id.; Second Amended Complaint* [Case No. 18-03078(SGJ), **Dkt. No. 157**].

3. Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor’s employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF. *See, e.g., Involuntary Petition Ruling* ¶ 27; *see also Confirmation Ruling*.

4. Claimant hereby files this Claim to assert any and all of its rights to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the foregoing harm, including for any amounts due or owed under the various agreements with the Debtor in connection with HCLOF (including, but not limited to, the Subscription and Transfer Agreement for Ordinary Shares Highland CLO Funding, Ltd., dated as of November 15, 2017, the Members Agreement Relating to the Company, dated as of November 15, 2017, the Highland CLO Funding, Ltd. Offering Memorandum dated November 15, 2017), and any and all legal and equitable claims or causes of action relating to the foregoing harm.

5. The Claimant has not attached the documentation supporting this Claim to this Proof of Claim because the documentation is voluminous and the Debtor has copies of such documents. However, any requested relevant documents will be provided to the Official Committee of Unsecured Creditors, the Court, the United States Trustee and the Debtor in the event of a dispute regarding this Proof of Claim and will be made available for review by other parties in interest as appropriate upon reasonable request and after consultation with the Debtor and execution of appropriate confidentiality agreements.

6. This Proof of Claim is filed with a full reservation of rights, including the right to amend, update, modify, supplement or otherwise revise this Proof of Claim in any respect at any time. The filing of this Proof of Claim is not and should not be construed to be: (a) a waiver or release of any of the Claimant's rights against any person, entity or property accruing to it against the Debtor and its estate; (b) a waiver of the Claimant's rights to assert that 28 U.S.C. § 157(b)(2)(C) is unconstitutional; (c) a consent or submission by the Claimant, or waiver of the Claimant's rights to object, to the jurisdiction of this Court with respect to the subject matter of any of the claims described herein, or any objection or other proceeding commenced with respect to any of the claims described herein, or any other proceeding commenced in the Debtor's chapter 11 case against or otherwise involving the Claimant; (d) a waiver or release of any right of the Claimant, or consent by the Claimant, to a trial by jury in this or any other court or proceeding; (e) a waiver or release of, or any limitation on, any right of the Claimant to have orders entered only after *de novo* review by a United States District Judge; (f) an election of remedies; or (g) a waiver of, or any other limitation on, any right of the Claimant to request withdrawal of the reference with respect to any matter, including, without limitation, any matter relating to this Proof of Claim.

7. Claimant's express reservation of all rights and causes of action, includes, without limitation, contingent or unliquidated rights that it or its affiliates may have against the Debtor, as well as defenses, offsets and counterclaims. This description and classification of claims by the Claimant is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Claimant.

8. Furthermore, the Claimant expressly reserves its rights to (a) file additional proofs of claim for additional claims that may be based on the same or additional documents or facts or other liability or indebtedness of the Debtor to the Claimant under contract or otherwise; (b) assert claims for cure of defaults in any agreement that the Debtor or any trustee appointed in this chapter 11 case may seek to assume; (c) assert any and all other claims, causes of action, defenses, offsets or counterclaims against the Debtor or any other parties; (d) file a request for payment of an administrative expense under 11 U.S.C. §§ 503 and 507 for any or all of the claims or rights of payment described above and any additional amounts; and (e) seek recovery through any relevant third parties, including any of the Debtor's insurance coverage providers.

9. This Proof of Claim does not encompass all claims that the Claimant or its affiliates may have that arise after the Petition Date and are entitled to administrative priority, and the Claimant expressly reserves its right to file such claim or any similar claim at the appropriate time, including any such post-petition claims arising under these service contracts.

10. This Proof of Claim is filed without prejudice to the filing by the Claimant of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of the Debtor. The Claimant does not, by this Proof of Claim or any amendment or other action, waive any rights with respect to any scheduled claim.

11. The Claimant reserves the right to withdraw, amend, clarify, modify or supplement this Proof of Claim to assert additional claims, causes of action or additional grounds for this Proof of Claim (including adding any additional contracts, agreements, obligations or other relationships between the Claimant and the Debtor), as well as the right to file any separate or additional proofs of claim with respect to the claims set forth herein or otherwise, including for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim in respect of additional amounts or for any other reason.

12. In executing and filing this Proof of Claim, the Claimant does not submit to the jurisdiction of the Bankruptcy Court for the Northern District of Texas for any purpose other than with respect to this Proof of Claim against the Debtor, and does not waive or release any rights or remedies against any other person or entity that may be liable for all or part of this Proof of Claim.

13. The Claimant otherwise reserves its rights, and nothing herein shall prejudice the Claimant's rights, under any order of the Court previously entered in this chapter 11 case.

14. Payments on account of this Proof of Claim should be sent to the Claimant at the address specified for notices to the Claimant in Part 1.3 of the Proof of Claim.

\*\*\*

## EXHIBIT 2

005121

PACHULSKI STANG ZIEHL & JONES LLP  
Jeffrey N. Pomerantz (CA Bar No. 143717) (*admitted pro hac vice*)  
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*Counsel for the Debtor and Debtor-in-Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:	§	
	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	

**DEBTOR'S MOTION FOR ENTRY OF AN ORDER APPROVING  
SETTLEMENT WITH HARBOURVEST (CLAIM NOS. 143, 147, 149, 150, 153, 154)  
AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

TO THE HONORABLE STACEY G. C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE:

<sup>1</sup> The last four digits of the Debtor's taxpayer identification number are 6725. The headquarters and service address for the Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



Highland Capital Management, L.P., the above-captioned debtor and debtor-in-possession (“Highland” or the “Debtor”), files this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving a settlement agreement (the “Settlement Agreement”),<sup>2</sup> a copy of which is attached as Exhibit 1 to the *Declaration of John A. Morris in Support of the Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* being filed simultaneously with this Motion (“Morris Dec.”), that, among other things, fully and finally resolves the proofs of claim filed by HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, “HarbourVest”). In support of this Motion, the Debtor represents as follows:

### **JURISDICTION**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”), and Rule 9019 of the Bankruptcy Rules.

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<sup>2</sup> All capitalized terms used but not defined herein shall have the meanings given to them in the Settlement Agreement.

## **RELEVANT BACKGROUND**

### **A. Procedural Background**

3. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Court”).

4. On October 29, 2019, the official committee of unsecured creditors (the “Committee”) was appointed by the U.S. Trustee in the Delaware Court.

5. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor’s case to this Court [Docket No. 186].<sup>3</sup>

6. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the “Settlement Motion”). This Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the “Settlement Order”).

7. In connection with the Settlement Order, an independent board of directors was constituted at the Debtor’s general partner, Strand Advisors, Inc., and certain operating protocols were instituted.

8. On July 16, 2020, this Court entered an order appointing James P. Seery, Jr., as the Debtor’s chief executive officer and chief restructuring officer [Docket No. 854].

9. The Debtor has continued in the possession of its property and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this chapter 11 case.

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<sup>3</sup> All docket numbers refer to the docket maintained by this Court.



**B. Overview of HarbourVest's Claims**

10. HarbourVest's claims against the Debtor's estate arise from its \$80 million investment in Highland CLO Funding, f/k/a Acis Loan Funding, Ltd. ("HCLOF"), pursuant to which HarbourVest obtained a 49 percent interest in HCLOF (the "Investment").

11. In brief, HarbourVest contends that it was fraudulently induced into entering into the Investment based on the Debtor's misrepresentations and omissions concerning certain material facts, including that the Debtor: (1) failed to disclose that it never intended to pay an arbitration award obtained by a former portfolio manager, (2) failed to disclose that it engaged in a series of fraudulent transfers for the purpose of preventing the former portfolio manager from collecting on his arbitration award and misrepresented the reasons changing the portfolio manager for HCLOF immediately prior to the Investment, (3) indicated that the dispute with the former portfolio manager would not impact investment activities, and (4) expressed confidence in the ability of HCLOF to reset or redeem the collateralized loan obligations ("CLOs") under its control.

12. HarbourVest seeks to rescind its Investment and claims damages in excess of \$300 million based on theories of fraud, fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, negligent misrepresentation, and breach of fiduciary duty (under Guernsey law), and on alleged violations of state securities laws and the Racketeer Influenced Corrupt Organization Act ("RICO").

13. HarbourVest's allegations are summarized below.<sup>4</sup>

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<sup>4</sup> Solely for purposes of this Motion, and not for any other reason, the facts set forth herein are adopted largely from the *HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 1057] (the "Response").

**C. Summary of HarbourVest's Factual Allegations**

14. At the time HarbourVest made its Investment, the Debtor was embroiled in an arbitration against Joshua Terry ("Mr. Terry"), a former employee of the Debtor and limited partner of Acis Capital Management, L.P. ("Acis LP"). Through Acis LP, Mr. Terry managed Highland's CLO business, including CLO-related investments held by Acis Loan Funding, Ltd. ("Acis Funding").

15. The litigation between Mr. Terry and the Debtor began in 2016, after the Debtor terminated Mr. Terry and commenced an action against him in Texas state court. Mr. Terry asserted counterclaims for wrongful termination and for the wrongful taking of his ownership interest in Acis LP and subsequently had certain claims referred to arbitration where he obtained an award of approximately \$8 million (the "Arbitration Award") on October 20, 2017.

16. HarbourVest alleges that the Debtor responded to the Arbitration Award by engaging in a series of fraudulent transfers and corporate restructurings, the true purposes of which were fraudulently concealed from HarbourVest.

17. For example, according to HarbourVest, the Debtor changed the name of the target fund from Acis Funding to "Highland CLO Funding, Ltd." ("HCLOF") and "swapped out" Acis LP for Highland HCF Advisor, Ltd. as portfolio manager (the "Structural Changes"). The Debtor allegedly told HarbourVest that it made these changes because of the "reputational harm" to Acis LP resulting from the Arbitration Award. The Debtor further told HarbourVest that in lieu of redemptions, resetting the CLOs was necessary, and that it would be easier to reset them under the "Highland" CLO brand instead of the Acis CLO brand.

18. In addition, HarbourVest also alleges that the Debtor had no intention of allowing Mr. Terry to collect on his Arbitration Award, and orchestrated a scheme to "denude"

Acis of assets by fraudulently transferring virtually all of its assets and attempting to transfer its profitable portfolio management contracts to non-Acis, Debtor-related entities.

19. Unaware of the fraudulent transfers or the true purposes of the Structural Changes, and in reliance on representations made by the Debtor, HarbourVest closed on its Investment in HCLOF on November 15, 2017.

20. After discovering the transfers that occurred between Highland and Acis between October and December 2017 following the Arbitration Award (the “Transfers”), on January 24, 2018, Terry moved for a temporary restraining order (the “TRO”) from the Texas state court on the grounds that the Transfers were pursued for the purpose of rendering Acis LP judgment-proof. The state court granted the TRO, enjoining the Debtor from transferring any CLO management contracts or other assets away from Acis LP.

21. On January 30, 2018, Mr. Terry filed involuntary bankruptcy petitions against Acis LP and its general partner, Acis Capital Management GP, LLC. *See In re Acis Capital Management, L.P.*, Case No. 18-30264-sgj11 (Bankr. N.D. Tex. 2018) and *In re Acis Capital Management GP, LLC*, Case No. 18-30265-sgj11 (Bankr. N.D. Tex. 2018) (collectively, the “Acis Bankruptcy Case”). The Bankruptcy Court overruled the Debtor’s objection, granted the involuntary petitions, and appointed a chapter 11 trustee (the “Acis Trustee”). A long sequence of events subsequently transpired, all of which relate to HarbourVest’s claims, including:

- On May 31, 2018, the Court issued a *sua sponte* TRO preventing any actions in furtherance of the optional redemptions or other liquidation of the Acis CLOs.
- On June 14, 2018, HCLOF withdrew optional redemption notices.
- The TRO expired on June 15, 2018, and HCLOF noticed the Acis Trustee that it was requesting an optional redemption.

- HCLOF's request was withdrawn on July 6, 2018, and on June 21, 2018, the Acis Trustee sought an injunction preventing Highland/HCLOF from seeking further redemptions (the "Preliminary Injunction").
- The Court granted the Preliminary Injunction on July 10, 2018, pending the Acis Trustee's attempts to confirm a plan or resolve the Acis Bankruptcy.
- On August 30, 2018, the Court denied confirmation of the First Amended Joint Plan for Acis, and held that the Preliminary Injunction must stay in place on the ground that the "evidence thus far has been compelling that numerous transfers after the Josh Terry judgment denuded Acis of value."
- After the Debtor made various statements implicating HarbourVest in the Transfers, the Acis Trustee investigated HarbourVest's involvement in such Transfers, including extensive discovery and taking a 30(b)(6) deposition of HarbourVest's managing director, Michael Pugatch, on November 17, 2018.
- On March 20, 2019, HCLOF sent a letter to Acis LP stating that it was not interested in pursuing, or able to pursue, a CLO reset transaction.

**D. The Parties' Pleadings and Positions Concerning HarbourVest's Proofs of Claim**

22. On April 8, 2020, HarbourVest filed proofs of claim against Highland that were subsequently denoted by the Debtor's claims agents as claim numbers 143, 147, 149, 150, 153, and 154, respectively (collectively, the "Proofs of Claim"). Morris Dec. Exhibits 2-7.

23. The Proofs of Claim assert, among other things, that HarbourVest suffered significant harm due to conduct undertaken by the Debtor and the Debtor's employees, including "financial harm resulting from (i) court orders in the Acis Bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise relegated the activity of HCLOF [*i.e.*, the Preliminary Injunction]; and (ii) significant fees and expenses related to the Acis Bankruptcy that were charged to HCLOF." *See, e.g.*, Morris Dec. Exhibit 2 ¶3.

24. HarbourVest also asserted "any and all of its right to payment, remedies, and other claims (including contingent or unliquidated claims) against the Debtor in connection with and relating to the forgoing harm, including for any amounts due or owed under the various

agreements with the Debtor in connection with relating to” the Operative Documents “and any and all legal and equitable claims or causes of action relating to the forgoing harm.” *See, e.g.*, Morris Dec. Exhibit 2 ¶4.

25. Highland subsequently objected to HarbourVest’s Proofs of Claim on the grounds that they were no-liability claims. [Docket No. 906] (the “Claim Objection”).

26. On September 11, 2020, HarbourVest filed its Response. The Response articulated specified claims under U.S. federal and state and Guernsey law, including claims for fraud, fraudulent concealment, fraudulent inducement, fraudulent misrepresentation, negligent misrepresentation (collectively, the “Fraud Claims”), U.S. State and Federal Securities Law Claims (the “Securities Claims”), violations of the Federal Racketeer Influenced and Corrupt Organizations Act (“RICO”), breach of fiduciary duty and misuse of fund assets, and an unfair prejudice claim under Guernsey law (collectively, with the Proofs of Claim, the “HarbourVest Claims”).

27. On October 18, 2020, HarbourVest filed its *Motion of HarbourVest Pursuant to Rule 3018 of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. 1207] (the “3018 Motion”). In its 3018 Motion, HarbourVest sought for its Claims to be temporarily allowed for voting purposes in the amount of more than \$300 million (based largely on a theory of treble damages).

#### **E. Settlement Discussions**

28. In October, the parties discussed the possibility of resolving the Rule 3018 Motion.

29. In November, the parties broadened the discussions in an attempt to reach a global resolution of the HarbourVest Claims. In the pursuit thereof, the parties and their

counsel participated in several conference calls where they engaged in a spirited exchange of perspectives concerning the facts and the law.

30. During follow up meetings, the parties' interests became more defined. Specifically, HarbourVest sought to maximize its recovery while fully extracting itself from the Investment, while the Debtor sought to minimize the HarbourVest Claims consistent with its perceptions of the facts and law.

31. After the parties' interests became more defined, the principals engaged in a series of direct, arm's-length, telephonic negotiations that ultimately lead to the settlement, whose terms are summarized below.

#### **F. Summary of Settlement Terms**

32. The Settlement Agreement contains the following material terms, among others:

- HarbourVest shall transfer its entire interest in HCLOF to an entity to be designated by the Debtor;<sup>5</sup>
- HarbourVest shall receive an allowed, general unsecured, non-priority claim in the amount of \$45 million and shall vote its Class 8 claim in that amount to support the Plan;
- HarbourVest shall receive a subordinated, allowed, general unsecured, non-priority claim in the amount of \$35 million and shall vote its Class 9 claim in that amount to support the Plan;
- HarbourVest will support confirmation of the Debtor's Plan, including, but not limited to, voting its claims in support of the Plan;
- The HarbourVest Claims shall be allowed in the aggregate amount of \$45 million for voting purposes;
- HarbourVest will support the Debtor's pursuit of its pending Plan of Reorganization; and
- The parties shall exchange mutual releases.

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<sup>5</sup> The NAV for HarbourVest's 49.98% interest in HCLOF was estimated to be approximately \$22 million as of December 1, 2020.

*See generally* Morris Dec. Exhibit 1.

### **BASIS FOR RELIEF REQUESTED**

33. Bankruptcy Rule 9019 governs the procedural prerequisites to approval of a settlement, providing that:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

FED. R. BANKR. P. 9019(a).

34. Settlements in bankruptcy are favored as a means of minimizing litigation, expediting the administration of the bankruptcy estate, and providing for the efficient resolution of bankruptcy cases. *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980). Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may approve a compromise or settlement as long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Ultimately, “approval of a compromise is within the sound discretion of the bankruptcy court.” *See United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984); *Jackson Brewing*, 624 F.2d at 602–03.

35. In making this determination, the United States Court of Appeals for the Fifth Circuit applies a three-part test, “with a focus on comparing ‘the terms of the compromise with the rewards of litigation.’” *Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997) (citing *Jackson Brewing*, 624 F.2d at 602). The Fifth Circuit has instructed courts to consider the following factors: “(1) The probability of success in the litigation, with due consideration for the uncertainty of law and fact, (2) The complexity and likely duration of the litigation and any



attendant expense, inconvenience and delay, and (3) All other factors bearing on the wisdom of the compromise.” *Id.* Under the rubric of the third factor referenced above, the Fifth Circuit has specified two additional factors that bear on the decision to approve a proposed settlement. First, the court should consider “the paramount interest of creditors with proper deference to their reasonable views.” *Id.*; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995). Second, the court should consider the “extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.” *Age Ref. Inc.*, 801 F.3d at 540; *Foster Mortgage Corp.*, 68 F.3d at 918 (citations omitted).

36. There is ample basis to approve the proposed Settlement Agreement based on the Rule 9019 factors set forth by the Fifth Circuit.

37. First, although the Debtor believes that it has valid defenses to the HarbourVest Claims, there is no guarantee that the Debtor would succeed in its litigation with HarbourVest. Indeed, to establish its defenses, the Debtor would be required to rely, at least in part, on the credibility of witnesses whose veracity has already been called into question by this Court. Moreover, it will be difficult to dispute that the Transfers precipitated the Acis Bankruptcy, and, ultimately, the imposition of the Bankruptcy Court’s TRO that restricted HCLOF’s ability to reset or redeem the CLOs and that is at the core of the HarbourVest Claims.

38. The second factor—the complexity, duration, and costs of litigation—also weighs heavily in favor of approving the Settlement Agreement. As this Court is aware, the events forming the basis of the HarbourVest Claims—including the Terry Litigation and Acis Bankruptcy—proceeded *for years* in this Court and in multiple other forums, and has already cost the Debtor’s estate millions of dollars in legal fees. If the Settlement Agreement is not approved, then the parties will expend significant resources litigating a host of fact-intensive



issues including, among other things, the substance and materiality of the Debtor's alleged fraudulent statements and omissions and whether HarbourVest reasonably relied on those statements and omissions.

39. Third, approval of the Settlement Agreement is justified by the paramount interest of creditors. Specifically, the settlement will enable the Debtor to: (a) avoid incurring substantial litigation costs; (b) avoid the litigation risk associated with HarbourVest's \$300 million claim; and (c) through the plan support provisions, increase the likelihood that the Debtor's pending plan of reorganization will be confirmed.

40. Finally, the Settlement Agreement was unquestionably negotiated at arm's-length. The terms of the settlement are the result of numerous, ongoing discussions and negotiations between the parties and their counsel and represent neither party's "best case scenario." Indeed, the Settlement Agreement should be approved as a rational exercise of the Debtor's business judgment made after due deliberation of the facts and circumstances concerning HarbourVest's Claims.

#### **NO PRIOR REQUEST**

41. No previous request for the relief sought herein has been made to this, or any other, Court.

#### **NOTICE**

42. Notice of this Motion shall be given to the following parties or, in lieu thereof, to their counsel, if known: (a) counsel for HarbourVest; (b) the Office of the United States Trustee; (c) the Office of the United States Attorney for the Northern District of Texas; (d) the Debtor's principal secured parties; (e) counsel to the Committee; and (f) parties requesting notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

**PACHULSKI STANG ZIEHL & JONES LLP**

-and-

/s/ Zachery Z. Annable

### *Counsel for the Debtor and Debtor-in-Possession*

## **EXHIBIT 3**

005135

## SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into as of December 23, 2020, between Highland Capital Management, L.P. (the “Debtor”), on the one hand, and HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (each, a “HarbourVest Party,” and collectively, “HarbourVest”), on the other hand. Each of the foregoing are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

## RECITALS

**WHEREAS**, on October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Bankruptcy Case”) in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Bankruptcy Court”);

**WHEREAS**, on December 4, 2019, the Delaware Bankruptcy Court entered an order transferring venue of the Debtor’s case to the Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 19-34054-sgj (the “Bankruptcy Court”);

**WHEREAS**, prior to the Petition Date, HarbourVest invested in Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. (“HCLOF”) and acquired an a 49.98% ownership interest in HCLOF (the “HarbourVest Interests”);

**WHEREAS**, the portfolio manager for HCLOF is Highland HCF Advisor, Ltd., a subsidiary of the Debtor;

**WHEREAS**, on April 8, 2020, HarbourVest filed proofs of claim in the Bankruptcy Case, which are listed on the Debtor’s claims register as claim numbers 143, 147, 149, 150, 153, and 154 (the “HarbourVest Claims”), asserting claims against the Debtor relating to its investment in HCLOF;

**WHEREAS**, on July 30, 2020, the Debtor filed the *Debtor’s First Omnibus Objection to Certain (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No Liability Claims; and (f) Insufficient-Documentation Claims* [**Docket No. 906**], in which the Debtor objected to the HarbourVest Claims;

**WHEREAS**, on September 11, 2020, HarbourVest filed the *HarbourVest Response to Debtor’s First Omnibus Objection to Creation (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No Liability Claims; and (f) Insufficient-Documentation Claims* [**Docket No. 1057**] (the “HarbourVest Response”);

**WHEREAS**, on October 18, 2020, HarbourVest filed the *Motion of HarbourVest Pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [**Docket No. 1207**] (the “3018 Motion” and together with the HarbourVest Response, the “HarbourVest Pleadings”);

**WHEREAS**, in the HarbourVest Pleadings, HarbourVest asserted, among other things, that the HarbourVest Claims included claims against the Debtor arising from fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, breach of fiduciary duty, breach of securities laws, and misuse of assets and sought damages in excess of \$300,000,000;

**WHEREAS**, the Debtor disputes the HarbourVest Claims;

**WHEREAS**, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization for Highland Capital Management, L.P.* [**Docket No. 1472**] (as amended, the “Plan”).<sup>1</sup>

**WHEREAS**, the Parties desire to enter into this Agreement which incorporates, formalizes, and finalizes the full and final resolution of the HarbourVest Claims and HarbourVest Pleadings; and

**WHEREAS**, this Agreement will be presented to the Bankruptcy Court for approval pursuant to **Federal Rule of Bankruptcy Procedure 9019** (“Rule 9019”).

**NOW THEREFORE**, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

**1. Settlement of Claims.**

(a) In full and complete satisfaction of the HarbourVest Claims, HarbourVest will receive:

(i) an allowed, nonpriority general unsecured claim in the aggregate amount of \$45,000,000 (the “Allowed GUC Claim”); and

(ii) an allowed subordinated claim in the aggregate amount of \$35,000,000 (the “Allowed Subordinated Claim” and together with the Allowed GUC Claim, the “Allowed Claims”).

(b) On the Effective Date, HarbourVest will transfer all of its rights, title, and interest in the HarbourVest Interests to the Debtor or its nominee pursuant to the terms of the *Transfer Agreement for Ordinary Shares of Highland CLO Funding, Ltd.*, attached hereto as Exhibit A (the “Transfer Agreements”) and the Debtor or its nominee will become a shareholder of HCLOF with respect to the HarbourVest Interests. The terms of the Transfer Agreements are incorporated into this Agreement by reference.

**2. Releases.**

(a) Upon the Effective Date, and to the maximum extent permitted by law, each HarbourVest Party on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents,

---

<sup>1</sup> All capitalized terms used but not defined herein shall have the meanings given to them in the Plan.

participants, subsidiaries, parents, successors, designees, and assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, the Debtor, HCLOF, HCLOF's current and former directors, and the Debtor's current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns, except as expressly set forth below (the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "HarbourVest Released Claims").

(b) Upon the Effective Date, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue (i) each HarbourVest Party and (ii) each HarbourVest Party's current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (the "HarbourVest Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Debtor Released Claims"); *provided, however*, that notwithstanding anything herein to the contrary, the release contained in this Section 2(b) will apply to the HarbourVest Released Parties set forth in subsection (b)(ii) only with respect to Debtor Released Claims arising from or relating to HarbourVest's ownership of the HarbourVest Interests.

(c) Notwithstanding anything in this Agreement to the contrary, the releases set forth herein will not apply with respect to (i) the Allowed Claims, (ii) the claims of Charlotte Investor IV, L.P., or (iii) the duties, rights, or obligations of any Party under this Agreement or the Transfer Agreements.

3. **Agreement Subject to Bankruptcy Court Approval.** The effectiveness of this Agreement and the Parties' obligations hereunder are conditioned in all respects on the approval of this Agreement by the Bankruptcy Court. The Parties agree to cooperate and use reasonable efforts to have this Agreement approved by the Bankruptcy Court. The "Effective Date" will be the date of an order entered by the Bankruptcy Court approving this Agreement pursuant to a motion filed under Rule 9019.



4. **Representations and Warranties.** Subject in all respects to Section 3 hereof:

(a) each HarbourVest Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the HarbourVest Released Claims and has not sold, transferred, or assigned any HarbourVest Released Claim to any other person or entity, (ii) no person or entity other than such HarbourVest Party has been, is, or will be authorized to bring, pursue, or enforce any HarbourVest Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) of such HarbourVest Party; and (iii) HarbourVest owns all of the HCLOF Interests free and clear of any claims or interests; and

(b) the Debtor represents and warrants to HarbourVest that (i) it has full authority to enter into this Agreement and to release the Debtor Released Claims and (ii) no person or entity other than the Debtor has been, is, or will be authorized to bring, pursue, or enforce any Debtor Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) of the Debtor Party.

5. **Plan Support.**

(a) Each HarbourVest Party hereby agrees that it will (a) vote all HarbourVest Claims held by such HarbourVest Party to accept the Plan, by delivering its duly executed and completed ballots accepting the Plan on a timely basis; and (b) not (i) change, withdraw, or revoke such vote (or cause or direct such vote to be changed withdrawn or revoked); (ii) exercise any right or remedy for the enforcement, collection, or recovery of any claim against the Debtor except in a manner consistent with this Agreement or the Plan, (iii) object to, impede, or take any action other action to interfere with, delay or postpone acceptance or confirmation of the Plan; (iv) directly or indirectly solicit, propose, file, support, participate in the formulation of or vote for, any restructuring, sale of assets (including pursuant to **11 U.S.C. § 363**), merger, workout, or plan of reorganization of the Debtor other than the Plan; or (v) otherwise take any action that would in any material respect interfere with, delay, or postpone the consummation of the Plan; provided, however, that such vote may be revoked (and, upon such revocation, deemed void ab initio) by such HarbourVest Party at any time following the termination of this agreement or the occurrence of a Support Termination Event (it being understood that any termination of this agreement shall entitle each HarbourVest Party to change its vote in accordance with section 1127(d) of the Bankruptcy Code), notwithstanding any voting deadline established by the Bankruptcy Court including without limitation the January 5, 2021, 5:00 p.m. (prevailing Central Time) deadline established by the *Order Approving Form of Ballots, Voting Deadline and Solicitation Procedures* [**Docket No. 1476**].

(b) In full resolution of the 3018 Motion, HarbourVest will have a general unsecured claim for voting purposes only in the amount of \$45,000,000.

(c) The obligations of the HarbourVest Parties under this Section 5 shall automatically terminate upon the occurrence of any of the following (each a “Support Termination Event”): (i) the effective date of the Plan, (ii) the withdrawal of the Plan, (iii) the entry of an order by the Bankruptcy Court (A) converting the Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code or (B) appointing an examiner with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code or a trustee in Bankruptcy

Case, or (iv) the failure of the Court to enter an order approving the terms of this Agreement and the settlement described herein pursuant to Rule 9019 prior to confirmation of the Plan.

6. **No Admission of Liability.** The Parties acknowledge that there is a bona fide dispute with respect to the HarbourVest Claims. Nothing in this Agreement will imply, an admission of liability, fault or wrongdoing by the Debtor, HarbourVest, or any other person, and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Debtor, HarbourVest, or any other person.

7. **Successors-in-Interest.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their successors, and assigns.

8. **Notice.** Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be specified in any notice delivered or mailed as set forth below:

**HARBOURVEST**

HarbourVest Partners L.P.  
Attention: Michael J. Pugatch  
One Financial Center  
Boston, MA 02111  
Telephone No. 617-348-3712  
E-mail: mpugatch@harbourvest.com

with a copy (which shall not constitute notice) to:

Debevoise & Plimpton LLP  
Attention: M. Natasha Labovitz, Esq.  
919 Third Avenue  
New York, NY 10022  
Telephone No. 212-909-6649  
E-mail: nlabovitz@debevoise.com

**THE DEBTOR**

Highland Capital Management, L.P.  
300 Crescent Court, Suite 700  
Dallas, Texas 75201  
Attention: James P. Seery, Jr.  
Telephone No.: 972-628-4100  
Facsimile No.: 972-628-4147  
E-mail: jpseeryjr@gmail.com



with a copy (which shall not constitute notice) to:

Pachulski Stang Ziehl & Jones LLP  
Attention: Jeffrey Pomerantz, Esq.  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
Telephone No.: 310-277-6910  
Facsimile No.: 310-201-0760  
E-mail: jpomerantz@pszjlaw.com

9. **Advice of Counsel.** Each Party represents that it has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

10. **Entire Agreement.** This Agreement and the Transfer Agreement contain the entire agreement and understanding concerning the subject matter of this Agreement, and supersede and replace all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation or warranty not contained in this Agreement, and that any such reliance would be unreasonable. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

11. **No Party Deemed Drafter.** The Parties acknowledge that the terms of this Agreement are contractual and are the result of arms'-length negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

12. **Future Cooperation.** The Parties agree to cooperate and execute such further documentation as is reasonably necessary to effectuate the intent of this Agreement.

13. **Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

14. **Governing Law; Venue; Attorneys' Fees and Costs.** The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the Bankruptcy Court during the pendency of the Bankruptcy Case and thereafter to the exclusive jurisdiction of the state and federal courts located in the Northern District of Texas, Dallas Division, with respect to any disputes arising from or out of this Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs (including experts).

*[Remainder of Page Intentionally Blank]*

IT IS HEREBY AGREED.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: /s/ James P. Seery, Jr.  
Name: James P. Seery, Jr.  
Its: CEO/CRO

**HarbourVest 2017 Global Fund L.P., by HarbourVest 2017 Global Associates L.P., its General Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest 2017 Global AIF L.P., by HarbourVest Partners (Ireland) Limited, its Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest Dover Street IX Investment L.P., by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest Partners L.P., on behalf of funds and accounts under management, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HarbourVest Skew Base AIF L.P., by HarbourVest Partners (Ireland) Limited, its  
Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed  
Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

**HV International VIII Secondary L.P., by HIPEP VIII Associates L.P., its General  
Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC,  
its Managing Member**

By: /s/ Michael Pugatch  
Name: Michael Pugatch  
Its: Managing Director

## Exhibit A

**TRANSFER AGREEMENT**  
**FOR ORDINARY SHARES OF**  
**HIGHLAND CLO FUNDING, LTD.**

This Transfer Agreement, dated as of December [REDACTED], 2020 (this “**Transfer Agreement**”), is entered into by and among Highland CLO Funding, Ltd. (the “**Fund**”), Highland HCF Advisor, Ltd. (the “**Portfolio Manager**”), HCMLP Investments, LLC (the “**Transferee**”) and each of the following: HarbourVest Dover Street IX Investment L.P., HarbourVest 2017 Global AIF L.P., HarbourVest 2017 Global Fund L.P., HV International VIII Secondary L.P., and HarbourVest Skew Base AIF L.P. (collectively, the “**Transferors**”).

WHEREAS, each Transferor is the record, legal and beneficial owner of the number of ordinary shares (“**Shares**”) of the Fund set forth opposite such Transferor’s name on Exhibit A hereto (with respect to each Transferor, the “**Transferred Shares**”).

WHEREAS the Transferee is an affiliate and wholly owned subsidiary of Highland Capital Management, L.P. (“**HCMLP**”) which is one of the initial members of the Fund.

WHEREAS, each Transferor wishes to transfer and assign 100% of its rights, title and interest as a shareholder in the Fund, including the Transferred Shares (the “**Interest**”) on the terms set forth in this Transfer Agreement.

WHEREAS, subject to and in connection with the approval of that certain Settlement Agreement, dated on or about the date hereof, by and among HCMLP and the Transferors (the “**Settlement Agreement**”), the Transferee desires that the Interest be transferred to Transferee and that thereafter the Transferee will become a Shareholder and the Transferors will no longer be Shareholders.

WHEREAS, the Portfolio Manager desires to consent to such transfers and to the admission of Transferee as a Shareholder on the terms set forth herein, and the Transferors and Transferee agree to such terms.

WHEREAS, the Fund desires to amend its records to reflect the foregoing transfers.

NOW, THEREFORE, the parties hereto agree as follows:

1. Transfer of Shares and Advisory Board

- a. Each Transferor hereby transfers and assigns all of its rights, title, and interest in its Interest to the Transferee, and the Transferee wishes to be admitted to the Fund as a Shareholder.
- b. In connection with the transfer of the Interest as contemplated herein, the Transferee shall be granted the right to appoint a representative to the Fund’s advisory board (the “**Advisory Board**”) to replace the Transferors’ appointed representative to the Advisory Board.

- c. Transferee hereby assumes all of Transferor's rights and obligations in respect of the Interest effective as of the Effective Date (as defined below) and acknowledge that thereafter Transferee shall be subject to the applicable terms and provisions of the Members' Agreement dated as of November 15, 2017 (the "**Members' Agreement**"), the Articles of Incorporation adopted November 15, 2017 (the "**Articles**") and the Subscription and transfer Agreement, dated as of November 15, 2017 among each Transferor, the Fund and the Portfolio Manager (the "**Subscription Agreement**", and together with the Members' Agreement and the Articles, the "**Fund Agreements**") with respect to the Interest. Transferee does not assume any liability or responsibility for any obligations or liabilities incurred by any Transferor prior to the Effective Date of the transfer.
  - d. Following the transfer, each Transferor shall have no further rights or obligations to any party hereunder in respect of the Interest under the Fund Agreements.
  - e. This Transfer Agreement, and the parties' obligations hereunder, are conditioned in all respects on the approval by the Bankruptcy Court for the Northern District of Texas, Dallas Division pursuant to **Federal Rule of Bankruptcy Procedure 9019** of (i) this Transfer Agreement and (ii) the Settlement Agreement, and each of the parties agree that no further action shall be required from any party for the transfer of the Interest to be effective except as described herein.
2. Transferee's Representations and Warranties. The Transferee represents and warrants to the Transferors, the Portfolio Manager, and the Fund as follows:
- a. This Transfer Agreement constitutes a valid and binding obligation of the Transferee, enforceable against it in accordance with its terms;
  - b. This Transfer Agreement has been duly and validly executed and delivered by or on behalf of the Transferee and such execution and delivery have been duly authorized by all necessary trust action of the Transferee;
  - c. The Transferee acknowledges receipt of, has read, and is familiar with, the Fund's Offering Memorandum for Placing Shares dated November 15, 2017 (the "**Offering Memorandum**") and the Fund Agreements;
  - d. The Transferee hereby accepts and receives the Interest from the Transferors for investment, and not with a view to the sale or distribution of any part thereof, and the Transferee has no present intention of selling, granting participations in, or otherwise distributing the same, but subject nevertheless to any requirement of law that the disposition of the Transferee's property shall at all times be within such Transferee's control; and
  - e. The Transferee is an "Eligible U.S. Investor" as defined in the Offering Memorandum.

3. Transferors' Representations and Warranties. Each Transferor represents and warrants to the Transferee, the Portfolio Manager, and the Fund as follows:
  - a. This Transfer Agreement constitutes a valid and binding obligation of the Transferor, enforceable against it in accordance with its terms;
  - b. This Transfer Agreement has been duly authorized, and duly and validly executed and delivered by the Transferor and such execution and delivery have been duly authorized by all necessary action of the Transferor; and
  - c. As of the date hereof, the Transferor has good and valid title to the Transferor's Interest, free and clear of any liens, vesting requirements or claims by others.
4. Consent to Transfer. Based in part on the representations and warranties of the Transferors and the Transferee which are included herein, and on the terms contained herein, the Portfolio Manager and the Fund hereby consent to the transfers of the Interest, the admission of the Transferee as a Shareholder and the Transferee's appointment of a representative to the Advisory Board, the Portfolio Manager's execution of this Transfer Agreement constituting its prior written consent to the transfers of the Interest for the purposes of article 18.1 of the Articles and this Transfer Agreement constituting express notice in writing to the Fund of the assignment set out at clause 1(c) above for the purposes of the Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979 (as amended).
5. Completion: As of the date of approval by the Bankruptcy Court for the Northern District of Texas, Dallas Division pursuant to Federal Rule of Bankruptcy Procedure 9019 of (i) this Transfer Agreement and (ii) the Settlement Agreement (the "**Effective Date**"):
  - a. each Transferor shall deliver or cause to be delivered to the Transferee a transfer instrument relating to the Transferred Shares duly executed and completed by that Transferor in favor of the Transferee; and
  - b. the Transferee shall deliver to the Transferors and the Fund a duly executed and dated Adherence Agreement (as defined in the Members' Agreement).

Prior to the Effective Date the Transferee shall procure that:

  - c. the board of directors of the Fund shall hold a meeting at which the transfer of the Shares to the Transferee shall be approved and registration in the register of members of the Fund shall be effected on the Effective Date.
6. Miscellaneous.
  - a. Each of the parties hereto agree to execute any further instruments and perform any further acts which are or may become reasonably necessary to carry out the intent of this Transfer Agreement or are reasonably requested by the Portfolio Manager, the Fund or a Transferor to complete the transfer of the Interest.



- b. The parties to this Transfer Agreement acknowledge that the terms of this Transfer Agreement are the result of arms'-length negotiations between the parties and their respective counsel. Each party and its counsel cooperated in the drafting and preparation of this Transfer Agreement. In any construction to be made of this Transfer Agreement, the language or drafting of this Transfer Agreement will not be construed against any party.
- c. This Transfer Agreement shall be governed by, and construed and enforced in accordance with, the internal substantive laws of the state of Delaware, without giving effect to conflicts of law principles.
- d. The representations, warranties and covenants of the Transferors and the Transferee shall remain in full force and effect following the transfer of the Interest, and the Fund and the Portfolio Manager thereafter may rely on all such representations, warranties and covenants.
- e. This Transfer Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Transfer Agreement for any purpose.
- f. Captions of sections have been added only for convenience and shall not be deemed to be a part of this Transfer Agreement.
- g. This Transfer Agreement is among the parties hereto. No Person that is not a party hereto shall have any right herein as a third-party beneficiary or otherwise except as expressly contemplated hereby.

*[Remainder of Page Intentionally Blank]*



*[Additional Signatures on Following Page]*

IN WITNESS WHEREOF, the undersigned have executed this Transfer Agreement as of the date first above written.

**TRANSFERORS:**

**HarbourVest Dover Street IX Investment L.P.**

By: HarbourVest Partners L.P., its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HV International VIII Secondary L.P.**

By: HIPEP VIII Associates L.P.  
Its General Partner

By: HarbourVest GP LLC  
Its General Partner

By: HarbourVest Partners, LLC  
Its Managing Member

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HarbourVest 2017 Global AIF L.P.**

By: HarbourVest Partners (Ireland) Limited  
Its Alternative Investment Fund Manager

By: HarbourVest Partners L.P.  
Its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC  
Its General Partner

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HarbourVest Skew Base AIF L.P.**

By: HarbourVest Partners (Ireland) Limited  
Its Alternative Investment Fund Manager

By: HarbourVest Partners L.P.  
Its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC  
Its General Partner

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**HarbourVest 2017 Global Fund L.P.**

By: HarbourVest 2017 Global Associates L.P.  
Its General Partner

By: HarbourVest GP LLC  
Its General Partner

By: HarbourVest Partners, LLC  
Its Managing Member

By: \_\_\_\_\_

Name: Michael Pugatch

Title: Managing Director

**Exhibit A**

<b><u>Transferee Name</u></b>	<b><u>Number of Shares</u></b>	<b><u>Percentage</u></b>
HarbourVest Dover Street IX Investment L.P.	[REDACTED]	[REDACTED]
HarbourVest 2017 Global AIF L.P.	[REDACTED]	[REDACTED]
HarbourVest 2017 Global Fund L.P.	[REDACTED]	[REDACTED]
HV International VIII Secondary L.P.	[REDACTED]	[REDACTED]
HarbourVest Skew Base AIF L.P.	[REDACTED]	[REDACTED]

## EXHIBIT 4

005155

D. Michael Lynn  
State Bar I.D. No. 12736500  
John Y. Bonds, III  
State Bar I.D. No. 02589100  
John T. Wilson, IV  
State Bar I.D. No. 24033344  
Bryan C. Assink  
State Bar I.D. No. 24089009  
BONDS ELLIS EPPICH SCHAFFER JONES LLP  
420 Throckmorton Street, Suite 1000  
Fort Worth, Texas 76102  
(817) 405-6900 telephone  
(817) 405-6902 facsimile

ATTORNEYS FOR JAMES DONDERO

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	Case No. 19-34054
L.P.,	§	
	§	
Debtor.	§	Chapter 11

**JAMES DONDERO’S OBJECTION TO DEBTOR’S MOTION FOR ENTRY  
OF AN ORDER APPROVING SETTLEMENT WITH HARBOURVEST**  
[Relates to Docket No. 1625]

James Dondero (“Respondent”), a creditor, indirect equity security holder, and party in interest in the above-captioned bankruptcy case, hereby files this Objection to *Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154)* [Docket No. 1625] (the “Motion”) filed by Highland Capital Management, L.P. (the “Debtor”). Through the Motion, the Debtor seeks approval of its compromise with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, “HarbourVest”) pursuant to Rule 9019 of the Federal





Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). In support of this objection, Respondent respectfully represents as follows:

## **I. INTRODUCTION**

1. Under Bankruptcy Rule 9019, the Bankruptcy Court is tasked with making an independent judgment on the merits of a proposed settlement to ensure that the proposed settlement is “fair, equitable, and in the best interest of the estate.”<sup>1</sup> While Respondent recognizes the Debtor’s efforts in arranging a settlement, there are at least three significant issues with the terms of the settlement that merit denial of the Motion: (i) the proposed settlement is not reasonable or in the best interest of the estate given the weakness of the HarbourVest Claim (as hereinafter defined); (ii) the proposed settlement is a blatant attempt to purchase votes in support of Debtor’s plan by giving HarbourVest a significant claim to which it would not otherwise be entitled; and (iii) the proposed settlement seeks to improperly classify the HarbourVest Claim<sup>2</sup> in two separate classes in order to gerrymander an affirmative vote on its reorganization plan. Moreover, the proposed settlement does not satisfy the factors for approval fixed by case law. On information and belief, Debtor’s CEO/CRO, Mr. Seery, has previously asserted on multiple occasions that the HarbourVest Claim had no value and that the Debtor could resolve such claim for no more than \$5 million. While Respondent and Mr. Seery have had a number of disagreements in this case, Respondent agrees with Mr. Seery’s initial conclusion that the HarbourVest Claim is substantially without merit. Respondent understands that any settlement will not necessarily provide the best possible outcome for the Debtor, but in this instance the proposed settlement far exceeds the bounds of reasonableness and, on its face, is an attempt by the Debtor to purchase votes in favor

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<sup>1</sup> See *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980).

<sup>2</sup> While HarbourVest has filed a number of claims, each filed claim is exactly the same except in the name of the claimant. See Claim Nos. 143, 147, 149, 150, 153, and 154.

of confirmation of its Plan. Given the Debtor's prior positions as to the merits of HarbourVest Claim it is necessary for the Court to closely scrutinize the settlement to determine why the Debtor now believes granting HarbourVest a net claim of nearly \$60 million<sup>3</sup> resulting from HarbourVest's investment in a non-debtor entity (which was and is managed by a non-debtor) to be in the best interest of the estate. Upon close scrutiny, Respondent believes the Court will find that the proposed settlement is not reasonable or in the best interest of the estate and the Motion therefore should be denied.

## II. BACKGROUND

2. On October 16, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the U.S. Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the "Delaware Court").

3. On October 29, 2019, the Official Committee of Unsecured Creditors (the "Committee") was appointed by the U.S. Trustee in Delaware.

4. On December 4, 2019, the Delaware Court entered an order transferring venue of the Debtor's Bankruptcy Case to this Court [Docket No. 186].

5. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the "Settlement Motion"). This Court approved the Settlement Motion on January 9, 2020 [Docket No. 339] (the "Settlement Order").

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<sup>3</sup> The proposed settlement provides that HarbourVest shall receive an allowed general unsecured (Class 8) claim in the amount of \$45 million and an allowed subordinated general unsecured (Class 9) claim in the amount of \$35 million. As part of the settlement, HarbourVest will then transfer its entire interest in Highland CLO Funding, Ltd. ("HCLOF") to an entity to be designated by the Debtor. The Debtor states that the value of this interest is approximately \$22 million as of December 1, 2020.

6. In connection with the Settlement Order, an independent board of directors was appointed on January 9, 2020, for the Debtor's general partner, Strand Advisors, Inc. (the "Board"). The members of the Board are James P. Seery, Jr., John S. Dubel, and Russell F. Nelms.

7. On July 16, 2020, this Court entered an order authorizing the Debtor to employ James P. Seery, Jr. as Chief Executive Officer and Chief Restructuring Officer of the Debtor. *See* Docket No. 854.

8. On April 8, 2020, HarbourVest filed Proofs of Claim Numbers 143, 149, 149, 150, 153, and 154 (collectively, the "HarbourVest Claim")<sup>4</sup>.

9. On July 30, 2020, the Debtor filed *Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 906] (the "Debtor Objection"), which contained an objection to the HarbourVest Claim.

10. On September 11, 2020, HarbourVest filed *HarbourVest Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No Liability Claims; and (F) Insufficient-Documentation Claims* [Docket No. 1057] (the "HarbourVest Response").

11. On December 23, 2020, the Debtor filed the Motion seeking approval of a proposed settlement of the HarbourVest Claim under Rule 9019. Docket No. 1625.

### **III. LEGAL STANDARD**

12. The merits of a proposed compromise should be judged under the criteria set forth in *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968). *TMT Trailer* requires that a compromise must be "fair and equitable." *TMT Trailer*, 390

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<sup>4</sup> While HarbourVest has filed a number of claims, each filed claim is exactly the same except in the name of the claimant. *See* Claim Nos. 143, 147, 149, 150, 153, and 154.

U.S. at 424; *In re AWECO, Inc.*, 725 F.2d 293, 298 (5th Cir. 1984). The terms “fair and equitable,” commonly referred to as the “absolute priority rule,” mean that (i) senior interests are entitled to full priority over junior interests; and (ii) the compromise is reasonable in relation to the likely rewards of litigation. *In re Cajun Electric Power Coop.*, 119 F.3d 349, 355 (5th Cir. 1997); *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980).

13. In determining whether a proposed compromise is fair and equitable, a Court should consider the following factors:

- (i) the probabilities of ultimate success should the claim be litigated;
- (ii) the complexity, expense, and likely duration of litigating the claim;
- (iii) the difficulties of collecting a judgment rendered from such litigation; and,
- (iv) all other factors relevant to a full and fair assessment of the wisdom of the compromise.

*TMT Trailer*, 390 U.S. at 424.

14. In considering whether to approve a proposed compromise, the bankruptcy judge “may not simply accept the trustee’s word that the settlement is reasonable, nor may he merely ‘rubber stamp’ the trustee’s proposal.” *In re Am. Res. Corp.*, 841 F.2d 159, 162 (7th Cir. 1987). “[T]he bankruptcy judge must apprise himself of all facts necessary to evaluate the settlement and make an informed and independent judgment about the settlement.” *See TMT Trailer*, 390 U.S. at 424, 434.

15. While the trustee’s business judgment is entitled to a certain deference, “business judgment is not alone determinative of the issue of court approval.” *See In re Endoscopy Ctr. of S. Nev., LLC*, 451 B.R. 527, 536 (Bankr. D. Nev. 2011). Further, the business judgment rule does not provide a debtor with “unfettered freedom” to do as it wishes. *See In re Pilgrim’s Pride Corp.*, 403 B.R. 413, 426 (Bankr. N.D. Tex. 2009) (“[A]s a fiduciary holding its estate in trust and responsible

to the court, a debtor in possession must administer its case and conduct its business in a fashion amenable to the scrutiny to be expected from creditor and court oversight.”). The Court must conduct an “intelligent, objective and educated evaluation”<sup>5</sup> of the proposed settlement “to ensure that the settlement is fair, equitable, and in the best interest of the estate and creditors.” *See In re Mirant Corp.*, 348 B.R. 725, 739 (Bankr. N.D. Tex. 2006) (quoting *Conn. Gen. Life Ins. Co. v. Foster Mortgage Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995)).

#### IV. ARGUMENT AND AUTHORITIES

16. As discussed in detail below, there are three significant issues with the terms of the settlement that merit denial of the Motion: (i) the proposed settlement is not reasonable or in the best interest of the estate given the weakness of the HarbourVest Claim; (ii) the proposed settlement is a blatant attempt to purchase votes in support of Debtor’s plan by giving HarbourVest a substantial claim to which it is not entitled; and (iii) the proposed settlement seeks to improperly classify HarbourVest’s one claim in two separate classes in order to gerrymander an affirmative vote on its reorganization plan. For these and certain additional reasons as discussed below, the Motion should be denied.

##### A. Through its Claim, HarbourVest Seeks to Revisit this Court’s Orders in the Acis Case

17. As an initial matter, through its proofs of claim, HarbourVest appears to be second guessing the Court’s judgment in the Chapter 11 case of Acis Capital Management, LP and Acis Capital Management GP, LLC (collectively, “Acis”) and seeking to revisit the Court’s orders entered in that case years ago. HarbourVest appears to be arguing that the TRO and injunction

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<sup>5</sup> *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980) (“To assure a proper compromise the bankruptcy judge, must be apprised of all the necessary facts for an intelligent, objective and educated evaluation. He must compare the terms of the compromise with the likely rewards of litigation.”).

entered in the Acis case that prevented redemptions or resets in the CLOs are now the root cause of the decrease in value of its investment in HCLOF.

18. Specifically, the claim states that HarbourVest incurred “financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF.”<sup>6</sup>

19. Essentially, HarbourVest is saying that the orders entered in the Acis case did not actually protect the investors and their investments, but instead were a triggering cause for the alleged diminution in value of its investment in HCLOF. Nevertheless, even though the value of HCLOF dropped dramatically only after the Effective Date of Acis’s Plan, years later and despite the lack of Debtor involvement in managing HarbourVest’s investment, HarbourVest now seeks to impute liability to the Debtor through a flimsy narrative designed to recoup investment losses unrelated to the Debtor and for which the Debtor owed HarbourVest no duty.

20. That HarbourVest now, years later, seeks to revisit this Court’s Acis orders raises a number of issues, including those as to HarbourVest’s involvement (or lack thereof) in the Acis case, whether the orders, Plan, or Confirmation Order in the Acis case may bar some of the relief requested by HarbourVest here, and questions related to the merits of the HarbourVest Claim and the legal grounds allegedly supporting it.

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<sup>6</sup> See Proof of Claim 143, para. 3 (“Due to the Acis bankruptcy and certain conduct alleged to have been undertaken by the Debtor (to whom Acis subcontracted its functions) and Debtor’s employees (who were officers, employees, and agents of Acis), the Claimant has suffered significant harm. Such harm includes, but is not limited to, financial harm resulting from, among other things (i) court orders in the Acis bankruptcy that prevented certain CLOs in which HCLOF was invested from being refinanced or reset and court orders that otherwise regulated the activity of HCLOF; and (ii) significant fees and expenses related to the Acis bankruptcy that were charged to HCLOF.”).

**B. The HarbourVest Claim Lacks Merit and the Proposed Settlement is Not Reasonable**

21. Based on the HarbourVest Claim and its filed response to the Debtor's objection, Respondent believes that the HarbourVest claim is meritless and the proposed settlement is not reasonable, fair and equitable, or in the best interest of the estate.

22. First, the proposed settlement is concerning particularly because HarbourVest's bare bones proof of claim contains very little in terms of allegations of specific conduct against the Debtor that would give rise to a \$60 million claim against this estate. While HarbourVest's response to the Debtor's claim objection is lengthy, it contains very little in real substance supporting its right to such a claim against the estate. The response also omits a number of key facts that are relevant and potentially fatal to its claim for damages against the Debtor's estate. Among them is the fact that Acis (and thereafter Reorganized Acis), along with Mr. Joshua Terry, managed HarbourVest's investment for years after it was made.<sup>7</sup> Despite this fact, HarbourVest's alleged damages appear to be based largely on the difference between the value of its initial investment at confirmation of Acis's Plan and the current value of the investment—which amount was directly determined by the performance of the CLOs that Acis managed during this time.<sup>8</sup> Neither the claim nor the response directly address the implications of Acis's management of the CLOs during the period following HarbourVest's investment. Nor does HarbourVest address or discuss performance of the CLOs, the market forces that may have caused HarbourVest's investment to lose value, or other factors influencing the current value of its investment. The

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<sup>7</sup> See, e.g., HarbourVest Proof of Claim 143, p. 5 ("The Claimant is a limited partner in one of the Debtor's managed vehicles, Highland CLO Funding, Ltd. ("HCLOF"). Acis Capital Management GP, L.L.C. and Acis Capital Management L.P. (together, "Acis"), the portfolio manager for HCLOF, filed for chapter 11 in the United States Bankruptcy Court for the Northern District of Texas (the "Court") on January 30, 2018.").

<sup>8</sup> See HarbourVest Response, Docket No. 1057, para. 40 ("HarbourVest has been injured from the Investment: not only has the Investment failed to accrue value, its value plummeted. The Investment's current value is far less than HarbourVest's initial contribution.").



speculative nature of the damages and the lack of specificity of the HarbourVest Claim and the role of Acis in the loss of value to HarbourVest all call into question the reliability of the allegations and the legal basis for the claim amount awarded in the settlement.

23. Also absent from Harbourvest's papers is any discussion of any contract or agreement between (i) HarbourVest and the Debtor; and (ii) any agreement that was executed in conjunction with HarbourVest's initial investment. While the proof of claim references a number of agreements, there is no explanation in the claim or in HarbourVest's response to the Debtor's claim objection of how these agreements give rise to liability against the *Debtor*. For example, neither the claim nor the HarbourVest Response (which includes more than 600 pages of attachments) attach *any* written agreement between HarbourVest and any other party. While HarbourVest has alleged a number of claims sounding in tort, many of those claims cannot exist absent a contract or other express relationship between the parties. Moreover, the terms of the relevant contracts themselves likely contain a number of provisions that may call into question Debtor's liability or would be otherwise relevant to merits of the HarbourVest Claim. For example, HarbourVest in its papers appears to assert or imply that the Debtor made a number of false or fraudulent representations to solicit HarbourVest's investment, but then fails to discuss or even identify the applicable agreements it alleges it was induced into signing in connection with its investment (this despite the substantial value of the investment when the Acis plan was confirmed).

24. Given these issues, among many others, the HarbourVest Claim is unsustainable both from a liability and damages standpoint and there are many very high hurdles HarbourVest would have to clear in seeking to prove liability against the Debtor and in proving its damages. For a long period of time, its investment was managed by Acis and the investment's performance was directly tied to Acis's inadequate performance as portfolio manager. Further, the value of



HarbourVest's investment is also directly tied to various market forces that may have impacted its value. The HarbourVest Claim is largely lacking in relevant facts and omits much salient information, such as who it contracted with in connection with its investment, the terms of such agreements, who controlled its investment during the entire period from November 2017 to the present, and the performance of its investment during the last two years. Given these issues, HarbourVest will be unable to demonstrate a causal connection between any conduct of the Debtor and the alleged damages it suffered from a reduction in value of its investment.

25. Because of the speculative nature of the HarbourVest Claim, and the fact that very little pleading or litigation has occurred, the proposed settlement in granting such a large claim is unreasonable, not fair and equitable, and not in the best interest of the estate. The lack of pending litigation, narrowing of threshold questions, and lack of detail in HarbourVest Claim make it impossible to determine whether the huge claim awarded under the proposed settlement is justified under the facts. Accordingly, the Motion should be denied.

**C. The Proposed Settlement is an Improper Attempt by the Debtor to Purchase Votes in Support of its Plan and the Separate Classification of the HarbourVest Claim Constitutes Gerrymandering in Violation of 11 U.S.C. § 1122**

26. The proposed settlement is a flagrant attempt by the Debtor to purchase votes in support of its Plan by giving HarbourVest a significant claim to which it has not shown itself entitled. Moreover, the separate classification of the HarbourVest Claim into two separate classes constitutes impermissible gerrymandering in violation of section 1122 of the Bankruptcy Code. The proposed settlement essentially gives HarbourVest a claim it is not entitled to in exchange for votes in two separate classes. This is not a proper basis for a settlement and the Court should deny the Motion.

27. Section 1122 of the Bankruptcy Code provides as follows:

(a) Except as provided in subsection (b) of this section, a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class.

(b) A plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience.

11 U.S.C. § 1122.

28. “Chapter 11 requires classification of claims against a debtor for two reasons. Each class of creditors will be treated in the debtor's plan of reorganization based upon the similarity of its members' priority status and other legal rights against the debtor's assets. Proper classification is essential to ensure that creditors with claims of similar priority against the debtor's assets are treated similarly.” *In re Greystone III Joint Venture*, 995 F.2d 1274, 1277 (5th Cir. 1991).

29. “Section 1122 consequently must contemplate some limits on classification of claims of similar priority. A fair reading of both subsections suggests that ordinarily substantially similar claims, those which share common priority and rights against the debtor’s estate, should be placed in the same class.” *Id.* at 1278.

30. The Fifth Circuit has stated that there is “one clear rule that emerges from otherwise muddled caselaw on § 1122 claims classification: thou shalt not classify similar claims differently in order to gerrymander an affirmative vote on a reorganization plan.” *Id.* at 1279. The Court observed:

There must be some limit on a debtor’s power to classify creditors in such a manner. . . . Unless there is some requirement of keeping similar claims together, nothing would stand in the way of a debtor seeking out a few impaired creditors (or even one such creditor) who will vote for the plan and placing them in their own class.

*In re Greystone III Joint Venture*, 995 F.2d 1274, 1279 (5th Cir. 1991) (quoting *In re U.S. Truck Co.*, 800 F.2d 581, 586 (6th Cir. 1986)).

31. Here, the HarbourVest settlement and the classification of the HarbourVest Claim under the Plan blatantly violate the Fifth Circuit’s “one rule” concerning the classification of claims under section 1122. To the extent that HarbourVest even has a legitimate claim, not only should its claim be classified together with other unsecured creditors, its claim should be classified solely in one class. To allow the Debtor to do otherwise as proposed is improper gerrymandering in order to obtain a consenting class in express violation of section 1122.

**D. There Are Other Reasons for the Court to Closely Scrutinize the Proposed Settlement that May Warrant Denial of the Motion**

32. There are a number of other reasons for the Court to closely scrutinize the proposed settlement that may warrant denial of the Motion.

33. First, the granting to HarbourVest of a claim in the total amount of \$80 million potentially allows HarbourVest to achieve a significant windfall at the expense of other creditors and equity holders. The Debtor has asserted numerous times that the estate is solvent and, for this reason, the purported subordinated claim of \$35 million (if allowed and approved) may be worth just as much as its general unsecured claim. This is a huge figure in this case, outshined only by the Redeemer Committee, which has an actual arbitration award obtained after lengthy litigation. By contrast, the HarbourVest Claim contains only a few paragraphs of generalized allegations that essentially argue that the Debtor’s alleged actions related to the Acis bankruptcy, and this Court’s orders in the Acis case, are a “but for” cause of the loss of its investment. While the HarbourVest Response is lengthy, it lacks necessary details for the Court to determine whether HarbourVest *may* be entitled to the relief requested by the Motion. The other significant creditors in this case—*inter alia*, Redeemer, UBS and Acis—all had pending claims that were litigated. Nor is HarbourVest a trade creditor, vendor, or other contract counter-party of the Debtor. The HarbourVest Claim is thus uniquely situated in this case and, given the size and the nature of its

claims, should invite close scrutiny. Under these facts, the potential allowance of an \$80 million claim (less the value of its share in HCLOF, which may suffer by continued management by Acis) against the estate for an investment which was not held or managed by the Debtor would be a huge undue windfall.

34. Second, the Motion states that HarbourVest will vote its proposed allowed Class 8 (proposed at \$45 million) and Class 9 (proposed at \$35 million) claims in support of confirmation. There are at least two potential issues with this proposal. First, the deadline for parties to submit ballots was January 5, 2021, and as of the close of business on January 5, the HarbourVest Claim has not been allowed for voting purposes.<sup>9</sup> Second, the Motion and proposed settlement agreement state that the HarbourVest Claim will be allowed for voting purposes only as a general unsecured claim in the amount of \$45 million. It is unclear how HarbourVest can, or would be authorized to, vote its purported Class 8 and 9 Claims in support of the Plan after the voting deadline and when the settlement provides only for a voting claim in Class 8.

35. Third, while the Motion addresses the factor of probability of success in the litigation, it does not discuss in detail the cost of doing so in relation to the amount to be paid to HarbourVest under the settlement or the likelihood that the Debtor will succeed in the litigation. In addition, unlike the claims filed by Acis and UBS, the HarbourVest Claim does not arise from pending litigation. At this point, relatively little litigation has occurred and the parties have not addressed threshold issues that might dramatically narrow the scope of the HarbourVest Claim. Rule 9019 requires an analysis as to whether the probability of success in litigation is outweighed by the consideration achieved under the settlement. *See In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980) (The Court must “compare the terms of the compromise with the likely rewards

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<sup>9</sup> The hearing on the 3018 and 9019 motions are set concurrently with confirmation.

of litigation.”). Given the excessive amount to be paid under the settlement and the weakness of the HarbourVest Claim, this factor weighs in favor of denial of the Motion.

36. Fourth, it is unclear from the settlement papers whether the transfer by HarbourVest of its interest in HCLOF to the Debtor or an entity the Debtor designates will cause the value of the investment to be received by the Debtor’s estate. Further, the interest of HCLOF being conveyed under the proposed settlement may be subject to the Acis plan injunction, which could potentially prevent the Debtor’s estate from realizing the value of this interest. In the event the Court is inclined to approve the settlement, the order should make clear that the available value of the investment should be realized by the Debtor’s estate.

### **CONCLUSION**

For the reasons set forth above, Respondent respectfully requests that the Court enter an order denying the Motion and providing Respondent such other and further relief to which he may be justly entitled.

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Dated: January 6, 2021

Respectfully submitted,

/s/ D. Michael Lynn

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**ATTORNEYS FOR JAMES DONDERO**

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that, on January 6, 2021, a true and correct copy of the foregoing document was served via the Court's CM/ECF system on counsel for the Debtor and on all other parties requesting or consenting to such service in this case.

/s/ Bryan C. Assink

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## EXHIBIT 5

005171

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UNITED STATES BANKRUPTCY COURT FOR THE  
 NORTHERN DISTRICT OF TEXAS  
 DALLAS DIVISION

IN RE:	*	Chapter 11
	*	
	*	Case No. 19-34054sgj11
HIGHLAND CAPITAL MANAGEMENT, L.P.	*	
	*	
Debtor	*	

**OBJECTION TO DEBTOR’S MOTION FOR ENTRY OF AN ORDER APPROVING  
 SETTLEMENT WITH HARBOURVEST (CLAIM NOS. 143, 147, 149, 150, 153, 154)  
 AND AUTHORIZING ACTIONS CONSISTENT THEREWITH**

The Dugaboy Investment Trust and Get Good Trust (jointly, “Objectors”), submit this Objection for the purpose of objecting to the *Debtor’s Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Dkt. #1625] (the “Motion”) filed by Highland Capital Management, L.P. (the “Debtor”). Through the Motion, the Debtor seeks approval of its compromise with HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (collectively, “HarbourVest”) pursuant to Rule 9019 of the





Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). In support of this objection, Objectors respectfully represent as follows:

## **I. INTRODUCTION**

1. Objectors recognize that Courts favorably view settlements and, as a matter of course, generally approve settlements as being in the best interest of the bankruptcy estate. The settlement proposed herein, however, is different than other settlements inasmuch as it represents a 180 degree departure from the Debtor’s own analysis of the Claim of HarbourVest and the fact that the settlement is tied to HarbourVest approving the Debtor’s plan. Little or no information is provided by the Debtor as to why its initial analysis was flawed and what information or legal principal it discovered to change a zero claim into a massive claim that will have a significant impact on the recovery to creditors.

## **II. BACKGROUND**

2. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the U.S. Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Court”).

3. On October 29, 2019, the Official Committee of Unsecured Creditors (the “Committee”) was appointed by the U.S. Trustee in Delaware.

4. On December 4, 2019, the venue of this case was transferred. [Dkt. #186].

5. On July 16, 2020, this Court entered an order authorizing the Debtor to employ James P. Seery, Jr. as Chief Executive Officer and Chief Restructuring Officer of the Debtor. [See Dkt. #854].

6. On April 8, 2020, HarbourVest filed Proofs of Claim Numbers 143, 149, 149, 150, 153, and 154 (collectively, the “HarbourVest Claim”)<sup>1</sup>.

7. On July 30, 2020, the Debtor filed *Debtor’s First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No Liability Claims; and (F) Insufficient-Documentation Claims* [Dkt. #906] (the “Debtor Objection”), which contained an objection to the HarbourVest Claim.

8. On September 11, 2020, HarbourVest filed *HarbourVest Response to Debtor’s First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No Liability Claims; and (F) Insufficient-Documentation Claims* [Dkt. #1057] (the “HarbourVest Response”).

9. The Debtor, in its *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Dkt. #1473 pgs. 40-41], described its position relative to the HarbourVest Claim as follows:

The Debtor intends to **vigorously** defend the HarbourVest Claims on various grounds ..... The HarbourVest Entities invested approximately \$80,000,000.00 in HCLOF but seek an allowed claim in excess of 300 million dollars (after giving effect to treble damages for the alleged RICO violations)

10. On December 23, 2020, the Debtor filed the Motion seeking approval of a proposed settlement of the HarbourVest Claim under Rule 9019. [Dkt. # 1625].

11. The proposed settlement provides HarbourVest with the following:

- a. An allowed, general unsecured claim in the amount of \$45,000,000.00 [Dkt. #1625 pg. 9 pp.f]; and

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<sup>1</sup> While HarbourVest has filed a number of claims, each filed claim is exactly the same except in the name of the claimant. See Claim Nos. 143, 147, 149, 150, 153, and 154.

- b. A \$35,000,000 claim in Class 9 [Dkt. #1625 pg. 9 pp.f].
12. An integral element of the settlement requires that HarbourVest will “support confirmation of the Debtor’s Plan including, but not limited to, voting its claims in support of the Plan.”
13. The settlement also contains a provision that HarbourVest will transfer its entire interest in HCLOF to an entity to be designated by the Debtor. It is unclear whether HarbourVest has a right to transfer the interest and secondly, what the Debtor will do with the interest [Dkt. #1625 pp.f].
14. The sole support for the Motion is the Declaration of John Morris [Dkt. #1631] which fails to account for the enormous change in the Debtor’s position between November 24, 2020 when the Disclosure Statement was approved and December 23, 2020 when the Motion was filed, a period of less than thirty (30) days.
15. The Declaration of John Morris [Dkt. #1631] also contains no information as to the potential cost of the litigation, whether HarbourVest can transfer the interest or reasons, other than conclusory reasons, as to why the settlement is beneficial to the estate. The Debtor makes the assertion that the interest it is acquiring was worth \$22,000,000.00 as of December 1, 2020 without advising as to the basis for the valuation. Is it a book value and, if not, what was the methodology employed to arrive at the valuation? The Court has no basis to evaluate the settlement without essential information as to 1) how the asset being acquired is valued; 2) can the Debtor acquire the interest; and 3) how will the Debtor bring value to the estate in connection with the interest inasmuch as the Debtor has discretion as to where to place the asset to be acquired.

**A. LEGAL STANDARDS**

- Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968).

## B. ISSUES WITH THE SETTLEMENT

a) The settlement represents a radical change in the Debtor's position that was set forth in its Disclosure Statement. While the Debtor asserts that its position is

based on its fear of parties' oral testimony, the size of the transactions at issue make the case a document case, as opposed to who said what, when and how. A review of the applicable documents to determine whether they support the Debtor's initial position is warranted, as opposed to stating that the case is based upon the credibility of a witness. This settlement is not the settlement of an automobile accident where the parties are disputing who ran a red light;

- b) The settlement requires HarbourVest to support and vote in favor of the Debtor's Plan. On its face this appears to be vote buying. The settlement should not be conditioned upon HarbourVest's support or non-support of the Plan and its vote in favor or against the Plan; and
- c) No information is provided as to whether the Debtor can acquire the interest in HCLOF, liquidate the interest, who will receive the interest, or how will the estate benefit from the interest to be acquired.

## CONCLUSION

The settlement with HarbourVest has too many questions to be approved on the record before this Court and the parties, due to the Notice of the Motion, the holidays and the press of other litigation in this case, do not have the time to adequately investigate the propriety of the settlement.

January 8, 2021

Respectfully submitted,

*/s/Douglas S. Draper.*

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### CERTIFICATE OF SERVICE

I do hereby certify that on the 8<sup>th</sup> day of January, 2021, a copy of the above and foregoing *Objection To Debtor's Motion For Entry Of An Order Approving Settlement With Harbourvest (Claim Nos. 143, 147, 149, 150, 153, 154) And Authorizing Actions Consistent Therewith* has been served electronically to all parties entitled to receive electronic notice in this matter through the Court's ECF system as follows:

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## EXHIBIT 6

005182

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ATTORNEYS FOR CLO HOLDCO, LTD.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-SGJ
	§	
Debtor.	§	Chapter 11
	§	

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**CLO HOLDCO, LTD.'S OBJECTION TO HARBOURVEST SETTLEMENT**

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**TO THE HONORABLE STACEY G. JERNIGAN, U.S. BANKRUPTCY JUDGE:**

CLO Holdco, Ltd. ("**CLO Holdco**") respectfully files this *Objection to Harbourvest Settlement* (the "**Harbourvest Settlement Objection**") which seeks entry of an order from this Court denying the Debtor's *Motion for Entry of an Order Approving Settlement with Harbourvest (Claims Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* (the "**Harbourvest Settlement Motion**") for the reasons stated below. In support of the Harbourvest Settlement Objection, CLO Holdco respectfully states as follows:

**I.  
BACKGROUND**

**A. TRANSFERRING SHARES IN HCLOF**



1. CLO Holdco owns 75,061,630.55 shares, or about 49.02% of Highland CLO Funding, Ltd. ("**HCLOF**"). Other shareholders include Harbourvest 2017 Global AIF L.P., Harbourvest Global Fund L.P., Harbourvest Dover Street IX Investment L.P., and Harbourvest Skew Base AIF L.P., and HV International VIII Secondary L.P. (collectively, "**Harbourvest**"). Harbourvest owns approximately 49.98% of HCLOF. The remaining 1% is owned by the Debtor and a five other investors.

2. HCLOF is governed by a *Members Agreement Relating to the Company* dated November 15, 2017 by and between each of the members of HCLOF, including Harbourvest, the Debtor, and CLO Holdco (the "**Member Agreement**"). A copy of that agreement is attached hereto as **Exhibit A**.

3. Section 6 of the Member Agreement addresses the "Transfer or Disposals of Shares." MEMBER AGREEMENT, § 6. The Member Agreement places strict restrictions on the sale or transfer of shares to entities other than the initial Member's own affiliates. *See id.* at §§ 6.1, 6.2. Before a Member can transfer its interests to a party other than its own affiliates it must: (i) obtain the prior written consent of the Portfolio Manager; and (ii) "offer to the other Members a right to purchase the Shares, on a pro rata basis with respect to their current Shares, at the same price (which must be cash) as such Shares are proposed to be purchased by the prospective third party purchaser pursuant to an irrevocable offer letter" (the "**Right of First Refusal**"). *Id.* As further stated in section 6.2 of the Member Agreement, "The other Members will have 30 days following receipt of the letter to determine whether to purchase their entire pro rata portion of the Shares proposed to be Transferred." *Id.* at § 6.2.

#### **B. THE HARBOURVEST SETTLEMENT**

4. On December 23, 2020, the Debtor filed the Harbourvest Settlement Motion. On the following day, the Debtor filed a copy of the Settlement Agreement referenced in the

Harbourvest Settlement Motion (the "**Settlement Agreement**") [Dkt. No. 3]. In the Settlement Agreement, Harbourvest represents and warrants that it is authorized to transfer its interest in HCLOF to the Transferee, HCMLP Investments, LLC (the "**Transferee**"). SETTLEMENT AGREEMENT, Ex. A. § 3. Further, the Transferee and Debtor agree to be bound by the terms and conditions of the Member Agreement. *Id.* at § 1.c.

5. In exchange for conveniently classified allowed claims under the Debtor's *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (the "**Plan**") [Dkt. No. 1472], Harbourvest agrees to vote in favor of the Plan and to transfer all of its interests in HCLOF to the Transferee. SETTLEMENT AGREEMENT, § 1.

6. As detailed below, CLO Holdco objects to the Harbourvest Settlement Motion because Harbourvest has no authority to transfer its interests in HCLOF without first complying with the Right of First Refusal. The only way to effectuate such a transfer without first providing other members the Right of First Refusal is an intentionally inaccurate interpretation of the Member Agreement's contractual provisions that would render specific passages redundant and meaningless. More simply put, the only way Harbourvest and the Debtor could effectuate the Settlement Agreement is by violating fundamental tenets of contract interpretation.

## II. ARGUMENTS AND AUTHORITIES

### A. CONTRACT INTERPRETATION – AVOIDING REDUNDANCIES AND SURPLUS LANGUAGE

7. The Fifth Circuit recognizes fundamental tenets of contract interpretation, and notes that "contracts should be read as a whole, viewing particular language in the context in which it appears. *Woolley v. Clifford Chance Rogers & Wells, L.L.P.*, 51 F. App'x 930 (5th Cir. 2002) (citing Restatement (Second) of Contracts § 202 (1981)). The Fifth Circuit has applied substantially the same tenets of contract interpretation across the laws of various jurisdictions, and consistently reasons that "[a]ll parts of the agreement are to be reconciled, if possible, in order to avoid an

inconsistency. A specific provision will not be set aside in favor of a catch-all clause." *Broad v. Rockwell Int'l Corp.*, 642 F.2d 929, 947 (5th Cir. 1981) (internal citations omitted); and *see Hawthorne Land Co. v. Equilon Pipeline Co., LLC*, 309 F.3d 888, 892–93 (5th Cir. 2002); *Luv N' Care, Ltd. v. Grupo Rimar*, 844 F.3d 442, 447 (5th Cir. 2016); *Wooley*, 51 F.Appx. at 930.

8. Reconciliation of terms that would otherwise render other parts of a contract redundant is fundamental to proper contract interpretation. *Hawthorne Land*, 309 F.3d at 892-93. As the Fifth Circuit explained in *Hawthorne Land*, "each provision of a contract must be read in light of the other provisions so that each is given the meaning suggested by the contract as a whole. A contract should be interpreted so as to avoid neutralizing or ignoring a provision or treating it as surplusage." *Id.* (internal citations and quotations omitted). In other words, provisions of a contract should be read to create harmony, not internal inconsistencies, redundancies, and unnecessary surplus language. *See, e.g., Luv N' Care*, 844 F.3d at 447 (overturning district court on appeal by interpreting contract in manner that eliminated perceived redundancy).

## **B. ANALYZING THE MEMBER AGREEMENT**

9. Section 6.1 of the Member Agreement will almost certainly be cited by the Debtor and Harbourvest as authority for their entry into the Settlement Agreement, regardless of whether other Members or the Portfolio Manager consent. It states, in pertinent part, that:

No Member shall sell, pledge, charge, mortgage, assign, assign by way of security, transfer, convey, exchange or otherwise dispose of its Shares or its commitment to settle purchases of Shares under the Subscription and Transfer Agreement (each a "Transfer"), other than to an Affiliate of an initial Member party hereto, without the prior written consent of the Portfolio Manager...

MEMBER AGREEMENT, § 6.1. Harbourvest will likely stress that under the terms of the Member Agreement, it can transfer its interests so long as the transfer is to "an Affiliate of an initial Member." Indeed, the Debtor will no doubt point out to this Court that Harbourvest is

conveniently transferring its interests in HCLOF to an Affiliate of the Debtor, and that the Debtor is an initial Member listed in the Member Agreement.

10. Section 6.1, however, must be read in the context of the Member Agreement, and in conjunction with the transfer restrictions found in section 6.2. Read together it is clear that the consent exception allowing a transfer in 6.1 was intended to allow a Member to transfer its shares to *its* own Affiliate, without required consents and effectuating a Right of First Refusal. Doing so would allow inter-company transfers within a corporate structure without the need for complicated procedures. Applying Fifth Circuit precedent, this interpretation fits squarely within the agreement and gives weight to the terms of section 6.2 of the Member Agreement, as explained below.

**(i) Surplusage – Specific Allowance of Transfers by CLO Holdco to Debtor Affiliates**

11. Recall that both CLO Holdco and the Debtor are initial Members to the Member Agreement. MEMBER AGREEMENT, p. 3. Section 6.2 of the Member Agreement states, in pertinent part, that "Prior to making any Transfer of Shares (other than Transfers to Affiliates of an initial Member or, *in the case of CLO Holdco or a Highland Principal, to Highland, its Affiliates or another Highland Principal*) a Member must first..." comply with the Right of First Refusal. *Id.* at § 6.2 (emphasis added). The italicized language above is important for two reasons: (i) it specifically enumerates that CLO Holdco can transfer its interests to Debtor Affiliates without having to pursue the Right of First Refusal; and (ii) it allows only limited transfers between Members, as opposed to between a Member and an Affiliate of an initial Member.

12. If, as the Debtor and Harbourvest will likely argue, Members are allowed to transfer their interests to any Affiliates of any other initial Members, there is absolutely no need for the Member Agreement to specifically authorize CLO Holdco to transfer its interests to the Debtor's Affiliates. Per Fifth Circuit fundamentals of contract interpretation, that purported redundancy

should not be discarded as mere surplusage, and the Member Agreement should be interpreted in a manner that gives weight to that provision. *Hawthorne Land*, 309 F.3d at 892-93.

13. If the Member Agreement is read to literally allow all "Transfers to Affiliates of an initial Member" there would be no reason to expressly set forth allowed transfers between specific Members and other Member's Affiliates. If the Member Agreement sought to list all allowed transfers between Members and their Affiliates, it should have similarly noted that any Member could transfer its interest to any Harbourvest Member entity, as each Harbourvest Member entity is an Affiliate of the other Harbourvest Member entities. Alternatively, if the specific enumeration of CLO Holdco and the Highland Principals' transfer rights was surplusage, it would presumably have listed other parties' rights, or had inclusive language such as "including but not limited to" or "for example." The Member Agreement lacks such language and, as a result, should be interpreted in a manner that both gives weight to the specific provision while reconciling other provisions of the contract.

**(ii) Absurd Results – Disparate Transfer Rights Between Members**

14. Note that the Member Agreement does not generally allow a transfer of interests from Member to Member unless specifically enumerated. Section 6.2 specifically allows only CLO Holdco and the Highland Principals to make transfers to other Members, but those other Members include only the Debtor or another Highland Principal. MEMBER AGREEMENT, § 6.2. It does not allow the Debtor to transfer interests to any Member, and does not expressly allow any Member, other than limited transfers by CLO Holdco and the Highland Principals, to transfer interests to any other Member. *Id.* For instance, if the Debtor wished to transfer its interests to CLO Holdco, it would first have to offer all of the other Members their Right of First Refusal. *Id.*

15. Similarly, if Harbourvest wished to transfer its interest to CLO Holdco, it could not do so without first providing the Right of First Refusal to all other Members. *Id.* As noted above,



however, allowing a Member to transfer its interest to an Affiliate of any initial Member would allow all of the Members to transfer their interests to any Harbourvest Member entity, as the Harbourvest Members are Affiliates of each other. Given the specific enumeration of CLO Holdco and the Highland Principals' rights to inter-Member transfers, it would be inconsistent to expand that specific provision to allow all transfers by all Members to any Harbourvest entity without first providing a Right of First Refusal.

16. Such a reading would lead to absurd results. It would grant similarly situated Members profoundly disparate rights under the agreement, and could easily lead to manipulation. For instance, because the Harbourvest Members are technically Affiliates of an initial Member (each other), they could obtain control of all of the interests in HCLOF without any Member receiving a Right of First Refusal for any transfer. No other Member could do that. For instance, if CLO Holdco wished to acquire other Members' interests, the transferring member (including Harbourvest) would have to offer a Right of First Refusal in every instance. To resolve that potential disparate treatment—though CLO Holdco and Harbourvest own nearly identical ownership interests in HCLOF—CLO Holdco would have to form an Affiliate and acquire interests through the Affiliate. That simply cannot be the intended result of the Member Agreement.

17. Instead, the Member Agreement must be read to require Harbourvest to provide a Right of First Refusal to the other Members of HCLOF before transferring its interests to either the Debtor or the Transferee.

### **C. THE RIGHT OF FIRST REFUSAL IN BANKRUPTCY**

18. Most cases addressing third party rights of first refusal in bankruptcy involve the assignment of leases and landlords' rights of first refusal. In those cases, courts analyze whether such a provision in the debtor's contract is a defacto restriction on assignment that may be excised

from the agreement. This case is very different. Here, it is a creditor that owes a right of first refusal to another non-debtor entity.

19. Even so, at least one court has issued telling commentary on a bankruptcy court's ability to excise provisions of a bargained-for contract, stating "A bankruptcy court's authority to excise a bargained for element of a contract is questionable and modification of a nondebtor contracting party's rights is not to be taken lightly." *In re E-Z Serve Convenience Stores, Inc.*, 289 B.R. 45, 51-52 (Bankr. M.D.N.C. 2003) (citing *In re Joshua Slocum Ltd.*, 922 F.2d 1081, 1091 (3d Cir. 1991)). CLO Holdco was unable to find any case that would allow a bankruptcy court to invalidate or otherwise excise a third party's right of first refusal in what largely amounts to a non-debtor contract.

20. As the Member Agreement requires Harbourvest to provide a Right of First Refusal to the non-Debtor Members under section 6.2 of the Agreement, and such Members have 30 days to review and determine whether to purchase their pro-rata shares offered by Harbourvest, Harbourvest lacks contractual authority to enter into the Settlement Agreement.

#### **D. HARBOURVEST'S LACK OF AUTHORITY PRECLUDES ENFORCEMENT OF SETTLEMENT**

21. Harbourvest has not completed its conditions precedent to the transfer of its interest to Transferee under the Member Agreement. As detailed above, and in section 6.2 of the Agreement, Harbourvest must effectuate the Right of First Refusal before it can transfer its interests in HCLOF. MEMBER AGREEMENT, § 6.2. Harbourvest is, in essence, bound by the condition precedent of effectuating the Right of First Refusal before it is authorized under the Member Agreement to enter into the Settlement Agreement.

22. Courts should not enforce a settlement agreement where a party has a condition precedent to entry into the agreement and fails to satisfy that condition. *In re De La Fuente*, 409 B.R. 842, 846 (Bankr. S.D. Tex. 2009). As noted in part in *De La Fuente*, the court would not recognize

or enforce a settlement where the parties were subject to conditions precedent before the settlement could be effective, and the conditions precedent were not satisfied. This Court should similarly deny Harbourvest's proposed settlement, as it would deny the Members' Right of First Refusal, which is the benefit of their bargain under the Member Agreement.

**III.  
PRAYER FOR RELIEF**

WHEREFORE, CLO Holdco requests that this Court grant the Objection and enter an order denying the Harbourvest Settlement Motion.

DATED: January 8, 2020

Respectfully submitted,

**KANE RUSSELL COLEMAN LOGAN PC**

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**ATTORNEYS FOR CLO HOLDCO, LTD.**

### CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2020, a true and correct copy of the foregoing CLO Holdco Objection was served via the Court's electronic case filing (ECF) system upon all parties receiving such service in this bankruptcy case; and via e-mail upon the United States Trustee at [Lisa.L.Lambert@usdoj.gov](mailto:Lisa.L.Lambert@usdoj.gov) and upon the following parties:

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## **EXHIBIT 7**

005193

1

2 IN THE UNITED STATES BANKRUPTCY COURT  
3 FOR THE NORTHERN DISTRICT OF TEXAS  
4 DALLAS DIVISION

5 IN RE:

6 CHAPTER 11

7 CASE NO.

8 HIGHLAND CAPITAL 19-34054-  
9 MANAGEMENT, L.P. SGJLL

10

Debtor.

11

12

13 Confidential - Under Protective Order

14 REMOTE DEPOSITION OF

15 MICHAEL PUGATCH

16 Zoom Videoconference

17 01/11/2021

18 1:07 P.M. (EDT)

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REPORTED BY: AMANDA GORRONO, CLR

CLR NO. 052005-01

JOB NO. 188591

<p>Page 2</p> <p>1</p> <p>2 01/11/2021</p> <p>3 1:07 P.M. (EDT)</p> <p>4</p> <p>5</p> <p>6 REMOTE ORAL DEPOSITION OF MICHAEL</p> <p>7 PUGATCH, held virtually via Zoom</p> <p>8 Videoconferencing, pursuant to the</p> <p>9 Federal Rules of Civil Procedure before</p> <p>10 Amanda Gorrono, Certified Live Note</p> <p>11 Reporter, and Notary Public of the State</p> <p>12 of New York.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 3</p> <p>1</p> <p>2 A P P E A R A N C E S: (Via Remote)</p> <p>3 PACHULSKI STANG ZIEHL &amp; JONES</p> <p>4 Attorneys for Debtor</p> <p>5 780 Third Avenue</p> <p>6 New York, New York 10017</p> <p>7 BY: JOHN MORRIS, ESQ.</p> <p>8 HAYLEY WINOGRAD, ESQ.</p> <p>9</p> <p>10 BONDS ELLIS EPPICH SCHAFFER JONES</p> <p>11 Attorneys for Jim Dondero</p> <p>12 420 Throckmorton Street</p> <p>13 Fort Worth, Texas 76102</p> <p>14 BY: JOHN WILSON, ESQ.</p> <p>15 BRYAN ASSINK, ESQ.</p> <p>16</p> <p>17 DEBEVOISE &amp; PLIMPTON</p> <p>18 Attorneys for HarbourVest</p> <p>19 919 Third Avenue</p> <p>20 New York, New York 10022</p> <p>21 BY: ERICA WEISGERBER, ESQ.</p> <p>22 M. NATASHA LABOVITZ, ESQ.</p> <p>23 EMILY HUSH, ESQ.</p> <p>24 DANIEL STROIK, ESQ.</p> <p>25</p>
<p>Page 4</p> <p>1</p> <p>2 A P P E A R A N C E S: (Via Remote)</p> <p>3 KANE RUSSELL COLEMAN &amp; LOGAN</p> <p>4 Attorneys for CLO Holdco Limited</p> <p>5 Bank of America Plaza</p> <p>6 901 Main Street</p> <p>7 Dallas, Texas 75202</p> <p>8 BY: JOHN KANE, ESQ.</p> <p>9</p> <p>10 HELLER, DRAPER, HAYDEN, PATRICK, &amp; HORN</p> <p>11 Attorneys for The Dugaboy Investment</p> <p>12 Trust and the Get Good Trust</p> <p>13 650 Poydras Street</p> <p>14 New Orleans, Louisiana 70130</p> <p>15 BY: DOUGLAS DRAPER, ESQ.</p> <p>16</p> <p>17 LATHAM &amp; WATKINS</p> <p>18 Attorney For UBS</p> <p>19 885 Third Avenue</p> <p>20 New York, New York</p> <p>21 BY: SHANNON MCLAUGHLIN, ESQ.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 5</p> <p>1</p> <p>2 A P P E A R A N C E S: (Via Remote)</p> <p>3 KING &amp; SPALDING</p> <p>4 Attorney for Highland CLO Funding, Ltd.</p> <p>5 1180 Peachtree Street, NE</p> <p>6 Atlanta, Georgia 30309</p> <p>7 BY: MARK MALONEY, ESQ.</p> <p>8</p> <p>9</p> <p>10</p> <p>11 ALSO PRESENT:</p> <p>12 ALIZA GOREN, ESQ.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">Page 8</p> <p>1</p> <p>2 MR. WILSON: I'm John Wilson</p> <p>3 with the firm of Bonds Ellis Eppich</p> <p>4 Schafer Jones LP. And I represent Jim</p> <p>5 Dondero.</p> <p>6 MR. MORRIS: John Morris and</p> <p>7 Hayley Winograd of Pachulski Stang</p> <p>8 Ziehl &amp; Jones for the Debtor.</p> <p>9 MS. WEISGERBER: Erica</p> <p>10 Weisgerber from Debevoise &amp; Plimpton</p> <p>11 for HarbourVest.</p> <p>12 MR. KANE: John Kane of Kane</p> <p>13 Russell Coleman &amp; Logan, for CLO</p> <p>14 Holdco Limited.</p> <p>15 MR. DRAPER: Douglas Draper of</p> <p>16 Heller Draper &amp; Horn, for The Dugaboy</p> <p>17 Investment Trust and the Get Good</p> <p>18 Trust.</p> <p>19 MS. McLAUGHLIN: Shannon</p> <p>20 McLaughlin from Latham &amp; Watkins LLP</p> <p>21 for UBS.</p> <p>22 MR. MALONEY: Mark Maloney from</p> <p>23 King &amp; Spalding, on behalf of Highland</p> <p>24 CLO Funding Limited.</p> <p>25 MS. WEISGERBER: I'm joined on</p>	<p style="text-align: right;">Page 9</p> <p>1</p> <p>2 the line by my colleagues from</p> <p>3 Debevoise, Natasha Labovitz and Emily</p> <p>4 Hush, and Aliza Goren from HarbourVest</p> <p>5 is on the line, as well.</p> <p>6 MR. WILSON: As a preliminary</p> <p>7 matter, the witness' counsel has</p> <p>8 produced some documents to us that</p> <p>9 they've requested be subject to the</p> <p>10 confidentially order or a brief</p> <p>11 protective order entered at Document</p> <p>12 Number 382, in this case.</p> <p>13 And she's also requested that</p> <p>14 all counsel and participants in this</p> <p>15 deposition agree to be bound by the</p> <p>16 terms of that order, because some of</p> <p>17 the documents that were produced are</p> <p>18 stamped "confidential," and they want</p> <p>19 to maintain that confidentially.</p> <p>20 Do we have an agreement of all</p> <p>21 counsel and participants on the</p> <p>22 deposition to be bound by the terms of</p> <p>23 that agreed protective order?</p> <p>24 (All agreed.)</p> <p>25 MS. WEISGERBER: Okay. I think</p>



<p style="text-align: right;">Page 10</p> <p>1 Confidential - Pugatch</p> <p>2 that was everyone. Thank you all for</p> <p>3 confirming. And the deposition will</p> <p>4 be marked "confidential" until and</p> <p>5 unless HarbourVest designates the</p> <p>6 testimony otherwise.</p> <p>7 MR. WILSON: And that's fine.</p> <p>8 (Whereupon, a request for</p> <p>9 Transcript be marked Confidential</p> <p>10 under the Protective Order was made.)</p> <p>11 MICHAEL PUGATCH,</p> <p>12 called as a witness, having been</p> <p>13 first duly affirmed by a Notary Public of</p> <p>14 the State of New York, was examined and</p> <p>15 testified as follows:</p> <p>16 EXAMINATION</p> <p>17 BY MR. WILSON:</p> <p>18 Q. All right. Mr. Pugatch, how do</p> <p>19 you pronounce your name? I'm sorry.</p> <p>20 A. Yep, you've got it. Pugatch.</p> <p>21 Q. Pugatch. Okay. Can you state</p> <p>22 your full name for the record?</p> <p>23 A. Yeah. Michael Pugatch.</p> <p>24 Q. Okay. And you've been</p> <p>25 designated by HarbourVest to discuss some</p>	<p style="text-align: right;">Page 11</p> <p>1 Confidential - Pugatch</p> <p>2 matters related to the 9019 motion. And</p> <p>3 specifically we asked that HarbourVest</p> <p>4 produce a witness who could talk about the</p> <p>5 negotiations of the settlement with the</p> <p>6 Debtor, and also the factual allegations</p> <p>7 underlying HarbourVest's Proof of Claim,</p> <p>8 and those described in HarbourVest's</p> <p>9 response to the claim objection, including</p> <p>10 without limitation, its investment with</p> <p>11 Acis/HCLOF in the alleged representations</p> <p>12 made by the Debtor and/or Acis/HCLOF to</p> <p>13 HarbourVest, and any and all agreements</p> <p>14 entered into between HarbourVest and any</p> <p>15 other party related to its investment.</p> <p>16 Do you agree that you're the</p> <p>17 best person to talk about these matters on</p> <p>18 behalf of HarbourVest?</p> <p>19 A. Yes. Yes.</p> <p>20 Q. Okay. Have you given a</p> <p>21 deposition before?</p> <p>22 A. I have.</p> <p>23 Q. Okay. So you understand how it</p> <p>24 works that you're under oath, and that I'm</p> <p>25 going to be asking questions and you're</p>
<p style="text-align: right;">Page 12</p> <p>1 Confidential - Pugatch</p> <p>2 going to be giving answers. If at any</p> <p>3 time I ask a question that you don't</p> <p>4 understand, or we've had some problems</p> <p>5 with sometimes connectivity issues with</p> <p>6 Zoom. But yeah, any time that you don't</p> <p>7 understand my question or you didn't catch</p> <p>8 it, I'll be happy to repeat it.</p> <p>9 Also, one thing I found with</p> <p>10 Zoom is that it's easier to talk over</p> <p>11 people. I'll try not to talk over you. I</p> <p>12 would ask that you try to ensure that I've</p> <p>13 finished asking my question before you</p> <p>14 start your answer. And I will likewise</p> <p>15 try to ensure that you've finished your</p> <p>16 answer before start my next question.</p> <p>17 And at any time during this</p> <p>18 deposition if you feel the need to take a</p> <p>19 break, that's totally okay with me. The</p> <p>20 one thing that I would ask is if I've just</p> <p>21 asked a question, that you answer the</p> <p>22 question before requesting the break.</p> <p>23 And if we have that agreement</p> <p>24 and the ground rules, then I think I'm</p> <p>25 ready to start asking you my questions.</p>	<p style="text-align: right;">Page 13</p> <p>1 Confidential - Pugatch</p> <p>2 A. Sounds good.</p> <p>3 Q. What's your current address?</p> <p>4 A. 47 Wayne Road in Needham,</p> <p>5 Massachusetts.</p> <p>6 Q. Okay. And where are you located</p> <p>7 today?</p> <p>8 A. At that address.</p> <p>9 Q. Okay. That's your home address?</p> <p>10 A. Correct.</p> <p>11 Q. And is anyone in the room with</p> <p>12 you there?</p> <p>13 A. No.</p> <p>14 Q. And did you talk with anyone</p> <p>15 about your deposition today?</p> <p>16 A. Only counsel.</p> <p>17 Q. Okay. And did you go over the</p> <p>18 facts of the underlying investment and the</p> <p>19 settlement negotiations with your counsel?</p> <p>20 MS. WEISGERBER: I'm going to</p> <p>21 object on privilege grounds. He</p> <p>22 can – he prepared for the deposition</p> <p>23 with counsel. I don't think you can</p> <p>24 inquire into specifics of the</p> <p>25 preparation.</p>

<p style="text-align: right;">Page 14</p> <p>1 Confidential - Pugatch</p> <p>2 MR. WILSON: Okay. Well, you</p> <p>3 know, he was designated to talk about</p> <p>4 these matters, and I'm just asking if</p> <p>5 he discussed these matters with his</p> <p>6 counsel his before his testimony.</p> <p>7 That's all. I'm not asking the</p> <p>8 substance of those communications.</p> <p>9 MS. WEISGERBER: You're asking</p> <p>10 about conversations with counsel. How</p> <p>11 about you just ask if he's prepared to</p> <p>12 talk about those topics today?</p> <p>13 MR. WILSON: Okay.</p> <p>14 BY MR. WILSON:</p> <p>15 Q. Are you prepared to talk about</p> <p>16 those topics today?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Now, HarbourVest has</p> <p>19 filed several proofs of claim in this</p> <p>20 matter, and it looks like those are</p> <p>21 numbered 143 on behalf of HarbourVest,</p> <p>22 217 Global Fund L.P., and 144 HarbourVest</p> <p>23 2017 Global AIF, 149 HarbourVest Partners</p> <p>24 L.P., 150 HarbourVest Dover Street, IX</p> <p>25 Investment L.P., 153 HarbourVest – or I'm</p>	<p style="text-align: right;">Page 15</p> <p>1 Confidential - Pugatch</p> <p>2 sorry, HV International VIII Secondary</p> <p>3 L.P., and 154 HarbourVest Skew Base AIF</p> <p>4 LP.</p> <p>5 And you're here to talk on</p> <p>6 behalf of all of those entities, and you</p> <p>7 have, for purpose of this settlement and</p> <p>8 you're – the 9019 motion, these proofs of</p> <p>9 claim are all lumped together as one</p> <p>10 claim; is that correct?</p> <p>11 MS. WEISGERBER: I'm just going</p> <p>12 to object quickly and clarify that</p> <p>13 he's not here as a 30(b)(6) witness,</p> <p>14 but he is here as someone from</p> <p>15 HarbourVest who signed those proofs of</p> <p>16 claim. So with that, I'll let you</p> <p>17 continue.</p> <p>18 A. I'll just answered the question,</p> <p>19 yes, as a representative on behalf of all</p> <p>20 of those entities. I would defer to</p> <p>21 counsel, from a legal perspective, whether</p> <p>22 these are treated as a single or separate</p> <p>23 claims.</p> <p>24 MR. WILSON: Okay. And we can</p> <p>25 move on for now.</p>
<p style="text-align: right;">Page 16</p> <p>1 Confidential - Pugatch</p> <p>2 I'm going to submit the first</p> <p>3 exhibit. It's going to be Exhibit</p> <p>4 No. 1 to the deposition. I'm sending</p> <p>5 it by E-mail, and I'm also going to</p> <p>6 use a share screen.</p> <p>7 (Whereupon, Exhibit 1, Proof of</p> <p>8 Claim 143 filed 4/08/2020 nine pages,</p> <p>9 was marked for identification.)</p> <p>10 MR. WILSON: So this document</p> <p>11 right here is Claim Number 143 filed</p> <p>12 on April 8, 2020, and this one is</p> <p>13 filed on behalf of HarbourVest 2017</p> <p>14 Global Fund L.P.</p> <p>15 If we go down, scroll to the</p> <p>16 annex to proof of claim, it's Page 5</p> <p>17 of the document. It says that the</p> <p>18 Claimant is a limited partner in one</p> <p>19 of the Debtor's managed vehicles,</p> <p>20 Highland CLO Funding, Ltd.</p> <p>21 And I'm going to now send out an</p> <p>22 E-mail with Exhibit No. 2. I'm going</p> <p>23 to pull this Exhibit No. 2 document up</p> <p>24 on the share screen, as well. I guess</p> <p>25 that's right.</p>	<p style="text-align: right;">Page 17</p> <p>1 Confidential - Pugatch</p> <p>2 (Whereupon, Exhibit 2, Proof of</p> <p>3 Claim 149 filed 4/08/2020 nine pages,</p> <p>4 was marked for identification.)</p> <p>5 BY MR. WILSON:</p> <p>6 Q. Can you see the official proof,</p> <p>7 official form 410 proof of claim on your</p> <p>8 screen?</p> <p>9 A. The first one that you shared?</p> <p>10 Q. I'm now on Exhibit No. 2. Is it</p> <p>11 showing up on your screen?</p> <p>12 A. No.</p> <p>13 Q. Okay. Actually, I'm sorry. Is</p> <p>14 it now showing up on your screen?</p> <p>15 A. Now, it's showing up, yep.</p> <p>16 Q. Okay. So this one is Proof of</p> <p>17 Claim 149, filed on the same date. And</p> <p>18 this one's filed on behalf HarbourVest</p> <p>19 Partners L.P. And I'm going to scroll</p> <p>20 down to the annex to proof of claim, which</p> <p>21 looks largely like the annex to the</p> <p>22 previous proof of claim we looked at.</p> <p>23 But this one says, in Paragraph</p> <p>24 No. 2, the Claimant manages investment</p> <p>25 funds that are limited partners in one of</p>

<p style="text-align: right;">Page 18</p> <p>1 Confidential - Pugatch</p> <p>2 the Debtor's managed vehicles, Highland</p> <p>3 CLO Funding, Ltd.</p> <p>4 And can you tell me why this</p> <p>5 HarbourVest Partners L.P. filed a separate</p> <p>6 proof of claim, from the entities that</p> <p>7 were investors in HCLOF?</p> <p>8 A. I would only be able to answer</p> <p>9 that, based on conversations with counsel.</p> <p>10 Q. But in any event, HarbourVest</p> <p>11 Partners L.P. did not invest in HCLOF,</p> <p>12 correct?</p> <p>13 A. Not directly on behalf of</p> <p>14 itself, no.</p> <p>15 Q. All right. I'm going to stop</p> <p>16 that share screen.</p> <p>17 MR. WILSON: And this is going</p> <p>18 to be Exhibit Number 3.</p> <p>19 (Whereupon, Exhibit 3,</p> <p>20 Declaration of Michael Pugatch in</p> <p>21 Support of Motion of HarbourVest</p> <p>22 Pursuant to Rule 3018(a), was marked</p> <p>23 for identification.)</p> <p>24 MR. WILSON: And Exhibit No. 3</p> <p>25 that I've just submitted via E-mail,</p>	<p style="text-align: right;">Page 19</p> <p>1 Confidential - Pugatch</p> <p>2 and I'm about to put it up on the</p> <p>3 screen, is the Declaration of</p> <p>4 HarbourVest. Let me get it up here,</p> <p>5 so you can see it. This is the</p> <p>6 declaration of Michael Pugatch in</p> <p>7 support of motion of HarbourVest</p> <p>8 pursuant to Rule 3018(a).</p> <p>9 BY MR. WILSON:</p> <p>10 Q. Have you seen this document</p> <p>11 before?</p> <p>12 A. Yes.</p> <p>13 Q. And, in fact, this is your</p> <p>14 declaration; is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. And at the first line of this,</p> <p>17 of Paragraph 1 says that you're the</p> <p>18 managing director of HarbourVest Partners</p> <p>19 LLC?</p> <p>20 A. Correct.</p> <p>21 Q. And how is HarbourVest Partners</p> <p>22 LLC connected to these claims?</p> <p>23 A. That is the corporate entity or</p> <p>24 managing member of all of the underlying</p> <p>25 funds that are managed on behalf of</p>
<p style="text-align: right;">Page 20</p> <p>1 Confidential - Pugatch</p> <p>2 HarbourVest Partners L.P.</p> <p>3 Q. And you're the managing director</p> <p>4 of that entity?</p> <p>5 A. A managing director to that</p> <p>6 entity, yes.</p> <p>7 Q. You said "a managing director,"</p> <p>8 are there others?</p> <p>9 A. Yes.</p> <p>10 Q. Who are the others?</p> <p>11 A. There are over 50 managing</p> <p>12 directors at HarbourVest Partners LLC.</p> <p>13 Q. And are you the managing</p> <p>14 director that has charge of this</p> <p>15 particular HarbourVest investment, the one</p> <p>16 in HCLOF?</p> <p>17 A. Yes.</p> <p>18 MR. WILSON: All right. I beg</p> <p>19 your patience. I'm trying to conduct</p> <p>20 this deposition solo. I've got a lot</p> <p>21 of stuff I've got to go through. So</p> <p>22 I'll do my best to do it efficiently.</p> <p>23 But this next exhibit I'm going</p> <p>24 to submit is going to be Exhibit No.</p> <p>25 4. I'm sending it in the E-mail now.</p>	<p style="text-align: right;">Page 21</p> <p>1 Confidential - Pugatch</p> <p>2 (Whereupon, Exhibit 4, Member</p> <p>3 Agreement 28 pages, was marked for</p> <p>4 identification.)</p> <p>5 BY MR. WILSON:</p> <p>6 Q. Can you see this on your share</p> <p>7 screen?</p> <p>8 A. I can.</p> <p>9 Q. This is the Members Agreement</p> <p>10 relating to the Company.</p> <p>11 A. (Nods.)</p> <p>12 Q. I'm just going to scroll down.</p> <p>13 Okay. So this is the signature page for</p> <p>14 the HarbourVest entities that were</p> <p>15 invested in this company. And it says</p> <p>16 that you were the authorized person to</p> <p>17 sign on behalf of the first two entities:</p> <p>18 HarbourVest Dover Street, HarbourVest 2017</p> <p>19 Global, and then the next one here it says</p> <p>20 you're managing director. And here we see</p> <p>21 that HarbourVest Partners LLC.</p> <p>22 And if we scroll down, we see</p> <p>23 that you're the managing director of</p> <p>24 HarbourVest Partners LLC, again, on behalf</p> <p>25 of HV International, and that you're an</p>

<p style="text-align: right;">Page 22</p> <p>1 Confidential - Pugatch</p> <p>2 authorized person on behalf of HarbourVest</p> <p>3 Skew Base.</p> <p>4 So you signed all these</p> <p>5 agreements on behalf of the HarbourVest</p> <p>6 entities, when HarbourVest made its</p> <p>7 investment in HCLOF. Would that be</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. Sorry that was</p> <p>11 cumbersome, but I needed to get through</p> <p>12 it.</p> <p>13 MR. WILSON: I'm going to now</p> <p>14 stop that share screen. And I'll need</p> <p>15 to go to Exhibit No. 5. I'm E-mailing</p> <p>16 out Exhibit No. 5 right now.</p> <p>17 (Whereupon, Exhibit 5,</p> <p>18 HarbourVest Response to Debtor's First</p> <p>19 Omnibus Objection 617 pages, was</p> <p>20 marked for identification.)</p> <p>21 BY MR. WILSON:</p> <p>22 Q. This is -- I'll do another share</p> <p>23 screen -- this is <b>Docket 1057</b> filed in the</p> <p>24 Highland bankruptcy. And this is</p> <p>25 HarbourVest Response to Debtor's First</p>	<p style="text-align: right;">Page 23</p> <p>1 Confidential - Pugatch</p> <p>2 Omnibus Objection.</p> <p>3 Did you participate in the</p> <p>4 creation of this document?</p> <p>5 A. Yes.</p> <p>6 Q. So you had an opportunity to</p> <p>7 review this document, before it was filed?</p> <p>8 A. Correct.</p> <p>9 Q. And you agree with the</p> <p>10 statements and the positions taken in this</p> <p>11 document?</p> <p>12 A. I do.</p> <p>13 Q. All right. So what this says in</p> <p>14 Paragraph 8, that by the summer of 2017,</p> <p>15 HarbourVest was engaged in preliminary</p> <p>16 discussions with Highland, regarding the</p> <p>17 investment.</p> <p>18 First off, why was HarbourVest</p> <p>19 engaged in preliminary discussions with</p> <p>20 Highland?</p> <p>21 A. Highland had approached</p> <p>22 HarbourVest with an investment</p> <p>23 opportunity. This was really borne out of</p> <p>24 discussions that we had with them around a</p> <p>25 couple of investment opportunities, that</p>
<p style="text-align: right;">Page 24</p> <p>1 Confidential - Pugatch</p> <p>2 this opportunity with HCLOF being the one</p> <p>3 that by the summer of 2017, as stated</p> <p>4 here, was in, was advancing through</p> <p>5 discussions.</p> <p>6 Q. And which individuals at</p> <p>7 Highland were you engaged in discussions</p> <p>8 with? By "you," I mean HarbourVest.</p> <p>9 A. Yeah, I mean, originally it was</p> <p>10 through a couple of members of their</p> <p>11 investor relations team. My first point</p> <p>12 of contact was with Brad Eden, and then</p> <p>13 subsequently progressed to a larger subset</p> <p>14 of employees of Highland.</p> <p>15 Q. And who on behalf of HarbourVest</p> <p>16 was engaging in these discussions?</p> <p>17 A. It was primarily myself, my</p> <p>18 colleague, or two -- two colleagues</p> <p>19 primarily, alongside myself.</p> <p>20 Q. I'm sorry. I didn't catch the</p> <p>21 last part.</p> <p>22 A. Sorry. Myself and two other</p> <p>23 colleagues primarily.</p> <p>24 Q. And who are these two other</p> <p>25 colleagues?</p>	<p style="text-align: right;">Page 25</p> <p>1 Confidential - Pugatch</p> <p>2 A. Dustin Willard and then a more</p> <p>3 junior member of the HarbourVest team.</p> <p>4 Q. When you say "the HarbourVest</p> <p>5 team," what does that mean?</p> <p>6 A. So the broader investment team</p> <p>7 and specifically in this context, the</p> <p>8 secondary investment team at HarbourVest,</p> <p>9 that this was an opportunity for.</p> <p>10 Q. So who made the final decision,</p> <p>11 on behalf of HarbourVest, to make this</p> <p>12 investment?</p> <p>13 A. Ultimately it was a decision</p> <p>14 made by the investment committee of</p> <p>15 HarbourVest.</p> <p>16 Q. And who's on that investment</p> <p>17 committee?</p> <p>18 A. It's a four-member committee</p> <p>19 comprised of managing directors within the</p> <p>20 firm.</p> <p>21 Q. And who are those managing</p> <p>22 directors?</p> <p>23 A. I don't recall at the time who</p> <p>24 the members were. I can tell you the</p> <p>25 members now, of that committee. It has</p>

<p style="text-align: right;">Page 26</p> <p>1 Confidential - Pugatch</p> <p>2 changed or evolved over time.</p> <p>3 Q. And that committee included you?</p> <p>4 A. I was involved in the</p> <p>5 decisionmaking of that, yes, correct.</p> <p>6 Q. So you were part of the four-man</p> <p>7 committee that made this decision?</p> <p>8 A. Yes.</p> <p>9 Q. All right. I'm going to go back</p> <p>10 to what we've marked as Exhibit 3, which</p> <p>11 is your declaration. And it says in</p> <p>12 Paragraph 2, that HarbourVest is a passive</p> <p>13 minority investor in Highland CLO funds,</p> <p>14 HCLOF, and by the way, I haven't stated</p> <p>15 this before, but in this deposition if I</p> <p>16 say HCLOF, I'm going to be referring to</p> <p>17 Highland CLO funds.</p> <p>18 But it says that the vehicle is</p> <p>19 managed by Highland Capital Management,</p> <p>20 L.P.</p> <p>21 And why do you say that that</p> <p>22 vehicle was managed by Highland Capital</p> <p>23 Management, L.P.?</p> <p>24 A. I believe that is the named</p> <p>25 investment manager of HCLOF, per the</p>	<p style="text-align: right;">Page 27</p> <p>1 Confidential - Pugatch</p> <p>2 organization documents of that vehicle.</p> <p>3 Q. You believe that that was the</p> <p>4 investment manager on the organization</p> <p>5 documents, which --</p> <p>6 A. Of the various transaction</p> <p>7 documents that we entered into, in</p> <p>8 connection with our investment.</p> <p>9 Q. Would those have been the</p> <p>10 documents that you had entered on November</p> <p>11 the 15 of 2017?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. It says that HarbourVest</p> <p>14 initially invested \$73,522,928 for roughly</p> <p>15 49 percent interest in HCLOF; and more</p> <p>16 specifically, that would be a 49.98</p> <p>17 percent interest in HCLOF, correct?</p> <p>18 A. Sounds right, yes.</p> <p>19 Q. Okay. And then HarbourVest</p> <p>20 contributed an additional \$4,998,501</p> <p>21 following a capital call, and it's</p> <p>22 received three dividends, each totally</p> <p>23 \$1,570,429.</p> <p>24 Is all of that correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 28</p> <p>1 Confidential - Pugatch</p> <p>2 Q. And has HarbourVest received any</p> <p>3 additional dividends, since the making of</p> <p>4 this declaration?</p> <p>5 A. No, we have not.</p> <p>6 Q. Now, I want to skip down to</p> <p>7 Paragraph 3, where it says that</p> <p>8 HarbourVest expected proceeds from the</p> <p>9 original HCLOF investment were projected</p> <p>10 to exceed 135 million.</p> <p>11 Do you agree with that?</p> <p>12 A. That was the original projected</p> <p>13 value of the investment, yes.</p> <p>14 Q. Well, whose expectation was</p> <p>15 that?</p> <p>16 A. Those were figures, as I recall,</p> <p>17 that were originally provided to us by</p> <p>18 Highland to form the basis of our due</p> <p>19 diligence that we went through, and</p> <p>20 penultimately were included as part of our</p> <p>21 investment thesis in making the</p> <p>22 investment.</p> <p>23 Q. So your testimony is that</p> <p>24 Highland told you that your investment</p> <p>25 would be worth over \$135 million?</p>	<p style="text-align: right;">Page 29</p> <p>1 Confidential - Pugatch</p> <p>2 A. Yes.</p> <p>3 MS. WEISGERBER: Objection to</p> <p>4 the form. Misstates testimony.</p> <p>5 Go ahead, Mike.</p> <p>6 A. That was, that was part of our</p> <p>7 original due diligence, on the investment</p> <p>8 opportunity.</p> <p>9 Q. When you say part of your due</p> <p>10 diligence, are you saying that the number</p> <p>11 originated from Highland or that the</p> <p>12 number originated from your due diligence</p> <p>13 operations?</p> <p>14 MS. WEISGERBER: Objection to</p> <p>15 form.</p> <p>16 A. The number originally came from</p> <p>17 Highland and formed the basis upon which</p> <p>18 we conducted due diligence on the</p> <p>19 investment opportunity.</p> <p>20 Q. And after performing due</p> <p>21 diligence, you were satisfied that that</p> <p>22 was a reasonable projection?</p> <p>23 A. Yes.</p> <p>24 Q. And what was the, what was the</p> <p>25 estimated date, in which the value of your</p>



<p style="text-align: right;">Page 30</p> <p>1 Confidential - Pugatch</p> <p>2 investment would exceed the \$135 million?</p> <p>3 MS. WEISGERBER: Objection to</p> <p>4 form.</p> <p>5 A. I don't recall exactly. That</p> <p>6 would have been over, over several years.</p> <p>7 And again, this was the -- this was the</p> <p>8 projected value based on the original</p> <p>9 investment or the assets that were held by</p> <p>10 HCLOF, at the time of our investment.</p> <p>11 Q. Now, when you talk about a</p> <p>12 portfolio manager -- I'm sorry, when you</p> <p>13 talk about investment manager, are you</p> <p>14 referring to the portfolio manager?</p> <p>15 A. No.</p> <p>16 Q. So what's the difference in an</p> <p>17 investment manager and a portfolio</p> <p>18 manager?</p> <p>19 A. So in the context of this</p> <p>20 investment, the investment manager. We --</p> <p>21 we had -- HarbourVest had an investment</p> <p>22 with HCLOF. Highland was the investment</p> <p>23 manager of HCLOF that in turn held equity</p> <p>24 positions in a variety of CLOs, which had</p> <p>25 various portfolio managers associated with</p>	<p style="text-align: right;">Page 31</p> <p>1 Confidential - Pugatch</p> <p>2 those, all Highland affiliates.</p> <p>3 Q. And so who was the portfolio</p> <p>4 manager for the HarbourVest investment in</p> <p>5 HCLOF?</p> <p>6 MS. WEISGERBER: Objection to</p> <p>7 form.</p> <p>8 A. There were various underling</p> <p>9 portfolio managers, depending on the</p> <p>10 underlying CLO position.</p> <p>11 Q. Well, who was the initial</p> <p>12 portfolio manager?</p> <p>13 A. So, again it would depend on</p> <p>14 which underlying assets we're talking</p> <p>15 about. HCLOF was a diversified portfolio</p> <p>16 of multiple underlying CLO equity</p> <p>17 positions, all with portfolio managers</p> <p>18 that were Highland affiliates, as we</p> <p>19 understood it.</p> <p>20 Q. Well, I'm going to go back to</p> <p>21 Exhibit 1, Paragraph 2, this says, in the</p> <p>22 second sentence, "Acis Capital Management</p> <p>23 GP, LLC, and Acis Capital Management,</p> <p>24 L.P., together Acis, the portfolio manager</p> <p>25 for HCLOF," and then it continues on,</p>
<p style="text-align: right;">Page 32</p> <p>1 Confidential - Pugatch</p> <p>2 "filed for Chapter 11."</p> <p>3 Is this proof of claim correct,</p> <p>4 when it states that Acis Capital</p> <p>5 Management GP, LLC, and Acis Capital</p> <p>6 Management, L.P., were the portfolio</p> <p>7 manager for HCLOF?</p> <p>8 MS. WEISGERBER: Objection to</p> <p>9 form.</p> <p>10 A. I know that there was an issue</p> <p>11 with the portfolio manager for at least</p> <p>12 the Acis CLOs that were held by HCLOF.</p> <p>13 Q. Well, how do you distinguish</p> <p>14 between the Acis CLOs and the Highland</p> <p>15 CLOs? Is that based on who was managing</p> <p>16 them?</p> <p>17 MS. WEISGERBER: Objection to</p> <p>18 form.</p> <p>19 A. Again, they were all underlying</p> <p>20 investments of HCLOF. We didn't</p> <p>21 distinguish the portfolio manager, if you</p> <p>22 will, of those vehicles, other than again</p> <p>23 they were Highland affiliates.</p> <p>24 Q. But it's fair to say that Acis</p> <p>25 was managing at least a portion of the</p>	<p style="text-align: right;">Page 33</p> <p>1 Confidential - Pugatch</p> <p>2 HCLOF investment, correct?</p> <p>3 A. Correct. The underlying</p> <p>4 investments held by HCLOF, correct.</p> <p>5 Q. And did anything -- from the</p> <p>6 time that you -- well, let's just go to</p> <p>7 the -- I think we had the members</p> <p>8 agreement up a second ago. This would</p> <p>9 have been Exhibit 4.</p> <p>10 Yeah, right here. No. 14,</p> <p>11 Highland HCF Advisor, Ltd. is listed as</p> <p>12 the portfolio manager on the members</p> <p>13 agreement.</p> <p>14 Is that accurate, that Highland</p> <p>15 HCF Advisor, Ltd. was the portfolio</p> <p>16 manager?</p> <p>17 MS. WEISGERBER: Objection to</p> <p>18 form. Can you state as of what date</p> <p>19 you're asking, Counsel?</p> <p>20 MR. WILSON: Well, the date of</p> <p>21 this memorandum is, it says right</p> <p>22 here, 15 November 2017.</p> <p>23 BY MR. WILSON:</p> <p>24 Q. So as of the date November 15,</p> <p>25 2017, who was the portfolio manager for</p>

<p style="text-align: right;">Page 34</p> <p>1 Confidential - Pugatch</p> <p>2 this investment?</p> <p>3 A. I don't recall the specific</p> <p>4 names of the various entities that sat</p> <p>5 below the HCLOF level or below Highland</p> <p>6 Capital, as the investment manager of</p> <p>7 HCLOF.</p> <p>8 Q. Well, are you familiar with a</p> <p>9 company called Brigade?</p> <p>10 A. Yes.</p> <p>11 Q. And was that company a</p> <p>12 sub-manager of this investment?</p> <p>13 MS. WEISGERBER: Objection to</p> <p>14 form.</p> <p>15 A. Not at the time of our</p> <p>16 investment.</p> <p>17 Q. Not at the time. Well, when did</p> <p>18 the portfolio managers begin to change in</p> <p>19 this investment?</p> <p>20 MS. WEISGERBER: Objection to</p> <p>21 form.</p> <p>22 A. Do you mean subsequent to our</p> <p>23 investment?</p> <p>24 Q. Yes.</p> <p>25 A. So as I understand it in</p>	<p style="text-align: right;">Page 35</p> <p>1 Confidential - Pugatch</p> <p>2 connection with the Acis bankruptcy that</p> <p>3 took place, there was a change in the</p> <p>4 underlying either portfolio manager of</p> <p>5 certain of the CLOs, the Acis-managed CLOs</p> <p>6 or Acis-branded CLOs, I should say, and/or</p> <p>7 sub-advisor of those CLOs.</p> <p>8 Q. And was that at the direction of</p> <p>9 the Chapter 11 trustee?</p> <p>10 MS. WEISGERBER: Objection.</p> <p>11 A. That's my understanding.</p> <p>12 Q. And so when this investment was</p> <p>13 initially made, was Highland HCF Advisor,</p> <p>14 Ltd. the portfolio manager of the entire</p> <p>15 investment?</p> <p>16 MS. WEISGERBER: Objection to</p> <p>17 form.</p> <p>18 A. I don't recall the specifics</p> <p>19 underneath the HCLOF entity.</p> <p>20 Q. Well, there aren't any other</p> <p>21 portfolio managers listed on this</p> <p>22 document, that I can see.</p> <p>23 Is there any place in this</p> <p>24 document that you can point me to that</p> <p>25 would identify another portfolio manager?</p>
<p style="text-align: right;">Page 36</p> <p>1 Confidential - Pugatch</p> <p>2 MS. WEISGERBER: Objection to</p> <p>3 form. The document speaks for itself.</p> <p>4 A. Again, I think we may be</p> <p>5 distinguishing here between portfolio</p> <p>6 manager at the HCLOF level and portfolio</p> <p>7 manager sub-advisor, again, I'm not sure</p> <p>8 the proper terminology as it relates to</p> <p>9 each of the underlying CLOs that were</p> <p>10 partially owned by HCLOF.</p> <p>11 Q. Well, after the Acis bankruptcy</p> <p>12 was filed, and after the Chapter 11</p> <p>13 trustee appointed Acis as a portfolio</p> <p>14 manager of at least part of HCLOF, did</p> <p>15 Highland HCF Advisor continue to serve as</p> <p>16 portfolio manager?</p> <p>17 MS. WEISGERBER: Objection to</p> <p>18 form.</p> <p>19 A. All of HarbourVest's interaction</p> <p>20 was with Highland as the investment</p> <p>21 manager of HCLOF. My understanding of the</p> <p>22 change in those entities related to the</p> <p>23 portfolio management of the underlying</p> <p>24 Acis CLOs, not a change in the portfolio</p> <p>25 manager, at the HCLOF level.</p>	<p style="text-align: right;">Page 37</p> <p>1 Confidential - Pugatch</p> <p>2 Q. Well, Highland is listed as a</p> <p>3 member under this -- Highland Capital</p> <p>4 Management LLP is listed as a member under</p> <p>5 this Member Agreement; is that correct?</p> <p>6 MS. WEISGERBER: Objection to</p> <p>7 form.</p> <p>8 A. If that's what the document</p> <p>9 says, yes.</p> <p>10 Q. I'm going to look -- let me stop</p> <p>11 my share screen for a second.</p> <p>12 All right. I'm now at the top</p> <p>13 of Page 5 of this Exhibit 4, where it</p> <p>14 says, "Dover IX shall mean HarbourVest</p> <p>15 Dover Street IX Investment L.P."</p> <p>16 And Dover IX was the largest</p> <p>17 single investor of the HarbourVest Group;</p> <p>18 is that correct?</p> <p>19 A. Correct.</p> <p>20 Q. All right. I'm now going to go</p> <p>21 down to Paragraph 5. I'm sorry, it's not</p> <p>22 Paragraph 5. Paragraph 4, where it says</p> <p>23 "Composition of Advisory Board" in</p> <p>24 Paragraph 4.1, The Company shall establish</p> <p>25 an Advisory Board composed of two</p>

<p style="text-align: right;">Page 38</p> <p>1 Confidential - Pugatch</p> <p>2 individuals, one of whom shall be a</p> <p>3 representative of CLO Holdco and one of</p> <p>4 whom shall be a representative of</p> <p>5 Dover IX.</p> <p>6 And did this Advisory Board get</p> <p>7 created?</p> <p>8 A. I believe it was created, yes.</p> <p>9 Q. And who was the representative</p> <p>10 for CLO Holdco on the Advisory Board?</p> <p>11 A. I don't know.</p> <p>12 Q. Who was the representative for</p> <p>13 Dover IX on the Advisory Board?</p> <p>14 A. I can't recall whether it was</p> <p>15 myself or one other colleague who jointly</p> <p>16 manages this investment with me.</p> <p>17 Q. You don't recall if you were on</p> <p>18 the Advisory Board?</p> <p>19 A. The Advisory Board never met</p> <p>20 formally under its capacity as an Advisory</p> <p>21 Board.</p> <p>22 Q. Well, if you look down in</p> <p>23 Paragraph 4.3, I've got my mouse pointed</p> <p>24 here, I don't know if you can see it.</p> <p>25 About two-thirds of the way down in this</p>	<p style="text-align: right;">Page 39</p> <p>1 Confidential - Pugatch</p> <p>2 paragraph it says, "The consent of the</p> <p>3 Advisory Board shall be required to</p> <p>4 approve the following actions," and then</p> <p>5 it lists a number of things.</p> <p>6 Did the Advisory Board not have</p> <p>7 to – was it not required that the</p> <p>8 Advisory Board ever meet, because they</p> <p>9 didn't take any of these actions?</p> <p>10 MS. WEISGERBER: Objection.</p> <p>11 Objection to form.</p> <p>12 A. There may have been one or two</p> <p>13 actions taken by the Advisory Board, I'm</p> <p>14 looking at the list here to see what those</p> <p>15 may even have been, during the duration of</p> <p>16 our investment; but if so, those would</p> <p>17 have been written resolutions or written</p> <p>18 consents, as opposed to any meeting that</p> <p>19 was convened amongst the entire Advisory</p> <p>20 Board.</p> <p>21 Q. Okay. And the entire Advisory</p> <p>22 Board is just two individuals, correct?</p> <p>23 A. Correct, that's my</p> <p>24 understanding.</p> <p>25 Q. Okay. And if you go up a few</p>
<p style="text-align: right;">Page 40</p> <p>1 Confidential - Pugatch</p> <p>2 sentences above that in Paragraph 4.3 it</p> <p>3 says, The portfolio manager shall not act</p> <p>4 contrary to advice of the Advisory Board</p> <p>5 with respect to any action or</p> <p>6 determination expressly conditioned herein</p> <p>7 or in the offering memorandum on the</p> <p>8 consider approval of the Advisory Board.</p> <p>9 So the portfolio manager did not</p> <p>10 have the authority to disregard the advice</p> <p>11 of the Advisory Board; is that correct?</p> <p>12 MS. WEISGERBER: Objection to</p> <p>13 form; misstates the document.</p> <p>14 A. With respect to the limited role</p> <p>15 that the Advisory Board would have to</p> <p>16 play, yes, that would be my read.</p> <p>17 Q. Now, what is your understanding</p> <p>18 of a reset transaction?</p> <p>19 A. Has to do with a refinancing and</p> <p>20 reset of the investment period of an</p> <p>21 underlying CLO.</p> <p>22 Q. And would a reset transaction be</p> <p>23 contained within this – these actions</p> <p>24 that the Advisory Board's consent is</p> <p>25 required to approve?</p>	<p style="text-align: right;">Page 41</p> <p>1 Confidential - Pugatch</p> <p>2 A. No, it would not.</p> <p>3 MS. WEISGERBER: Objection.</p> <p>4 MR. MALONEY: Join.</p> <p>5 Q. It would not?</p> <p>6 A. It would not.</p> <p>7 Q. Well, if a reset was to be</p> <p>8 proposed, who would have the discretion to</p> <p>9 make that decision to enter a reset</p> <p>10 transaction?</p> <p>11 MS. WEISGERBER: Objection to</p> <p>12 form and foundation.</p> <p>13 MR. MALONEY: Join.</p> <p>14 A. That would be Highland as the</p> <p>15 manager of HCLOF, who owns the equity</p> <p>16 position to the underlying CLOs.</p> <p>17 Q. So you're saying that Highland</p> <p>18 would have the exclusive authority to</p> <p>19 enter a reset transaction?</p> <p>20 A. Correct.</p> <p>21 MS. WEISGERBER: Objection to</p> <p>22 form.</p> <p>23 MR. MALONEY: Join.</p> <p>24 Q. What if HarbourVest objected to</p> <p>25 a reset transaction? Would it have any</p>



<p style="text-align: right;">Page 42</p> <p>1 Confidential - Pugatch</p> <p>2 rights or remedies, in your understanding?</p> <p>3 MS. WEISGERBER: I'm going to</p> <p>4 object to form. And also just object</p> <p>5 to the extent that this is calling for</p> <p>6 legal conclusions.</p> <p>7 Mike --</p> <p>8 MR. WILSON: I've ask the</p> <p>9 witness, within his understanding of</p> <p>10 the way this investment worked.</p> <p>11 MS. WEISGERBER: If you have an</p> <p>12 understanding separate from any other</p> <p>13 conversations with counsel, Mike, you</p> <p>14 can certainly answer.</p> <p>15 A. Within my understanding,</p> <p>16 HarbourVest would not have had any ability</p> <p>17 or rights to object to a reset or for</p> <p>18 similar actions by Highland, as the</p> <p>19 manager of the HCLOF.</p> <p>20 Q. Okay. And just to, just for</p> <p>21 clarity, in 4.2 it says that, All actions</p> <p>22 taken by the Advisory Board shall be (i)</p> <p>23 by a unanimous vote of all of the members</p> <p>24 of the Advisory Board in attendance; or</p> <p>25 (ii), by written consent in lieu of a</p>	<p style="text-align: right;">Page 43</p> <p>1 Confidential - Pugatch</p> <p>2 meeting signed by all of the members of</p> <p>3 the Advisory Board.</p> <p>4 And we've talked about how there</p> <p>5 were two members, one of which represented</p> <p>6 CLO Holdco and one of which represented</p> <p>7 HarbourVest, and it was your testimony</p> <p>8 that you don't recall a meeting ever being</p> <p>9 conducted that you believed that there had</p> <p>10 been some written consents issued by the</p> <p>11 Advisory Board; is that correct?</p> <p>12 MS. WEISGERBER: Objection to</p> <p>13 form.</p> <p>14 A. That is my recollection, yes.</p> <p>15 Q. I'm sorry? I didn't hear your</p> <p>16 answer.</p> <p>17 A. That is my recollection, yes.</p> <p>18 Q. Okay. So what is the Advisory</p> <p>19 Board's general function in your</p> <p>20 understanding?</p> <p>21 MS. WEISGERBER: Objection to</p> <p>22 form.</p> <p>23 You can answer, Mike, if you</p> <p>24 know, other than, you know, legal</p> <p>25 conclusions, things like that, legal</p>
<p style="text-align: right;">Page 44</p> <p>1 Confidential - Pugatch</p> <p>2 advice.</p> <p>3 And also, Mike, you're welcome</p> <p>4 to look at the document, I think John</p> <p>5 is E-mailing you the documents as</p> <p>6 well. I don't know if you have the</p> <p>7 full document in front of you.</p> <p>8 THE WITNESS: Yeah, I can pull</p> <p>9 it up here.</p> <p>10 A. I mean, my understanding is the</p> <p>11 Advisory Board, the Advisory Board's</p> <p>12 involvement is as spelled as in Section</p> <p>13 4.3 of the agreement that you have on the</p> <p>14 screen. And that is the extent of the</p> <p>15 role that the Advisory Board would play.</p> <p>16 Q. Well, but as a practical matter,</p> <p>17 what did that entail?</p> <p>18 MS. WEISGERBER: Objection to</p> <p>19 form.</p> <p>20 A. Again, as a practical matter,</p> <p>21 the listed items, which I can't see, that</p> <p>22 are off the screen further down in 4.3 are</p> <p>23 the items that would require approval by</p> <p>24 the Advisory Board.</p> <p>25 Q. But other than those items, the</p>	<p style="text-align: right;">Page 45</p> <p>1 Confidential - Pugatch</p> <p>2 Advisory Board was not a routine part of</p> <p>3 the decision-making of the portfolio</p> <p>4 manager?</p> <p>5 MS. WEISGERBER: Objection to</p> <p>6 form.</p> <p>7 A. Not at all.</p> <p>8 Q. Did you say "not at all"?</p> <p>9 A. Not at all, no.</p> <p>10 Q. I'm going to refer back to</p> <p>11 Exhibit 5, which was Document -- or <b>Docket</b></p> <p>12 1057. I'll put that back on the share</p> <p>13 screen. I wanted you to scroll, sorry.</p> <p>14 It's a long document.</p> <p>15 I want you to look at</p> <p>16 Paragraph 37, which should be on your</p> <p>17 screen. And it says that these are</p> <p>18 misrepresentations that HarbourVest</p> <p>19 alleges were made by Highland. And the</p> <p>20 first bullet point states that, "Highland</p> <p>21 never informed HarbourVest that Highland</p> <p>22 had no intention of paying the Arbitration</p> <p>23 Award and was undertaking steps to ensure</p> <p>24 that Mr. Terry could not collect on his</p> <p>25 judgment."</p>

<p style="text-align: right;">Page 46</p> <p>1 Confidential - Pugatch</p> <p>2 Now, Mr. Terry did not have an</p> <p>3 arbitration award against Highland; is</p> <p>4 that correct?</p> <p>5 MS. WEISGERBER: Objection to</p> <p>6 form and foundation.</p> <p>7 A. My understanding is there was an</p> <p>8 Arbitration Award, awarded for the benefit</p> <p>9 of Mr. Terry.</p> <p>10 Q. But that award was against Acis,</p> <p>11 correct?</p> <p>12 MS. WEISGERBER: Objection to</p> <p>13 form.</p> <p>14 A. I don't know all of the details.</p> <p>15 I do know that Acis was a subsidiary of</p> <p>16 Highland, and there was an arbitration</p> <p>17 award that was for the benefit of</p> <p>18 Mr. Terry.</p> <p>19 Q. But you would agree with me that</p> <p>20 if, if Highland, or I'm sorry if Mr. Terry</p> <p>21 had an arbitration award against Acis,</p> <p>22 then Highland would not have any</p> <p>23 obligation to pay that award?</p> <p>24 MR. MORRIS: Objection to the</p> <p>25 form of the question.</p>	<p style="text-align: right;">Page 47</p> <p>1 Confidential - Pugatch</p> <p>2 MS. WEISGERBER: Objection to</p> <p>3 the form. Objection to the extent</p> <p>4 that it calls for a legal conclusion.</p> <p>5 I don't -- Mike, if you have a</p> <p>6 layman's understanding of the answer</p> <p>7 to that question, you're welcome to</p> <p>8 answer. But if not, don't answer.</p> <p>9 A. My understanding was Acis was a</p> <p>10 controlled subsidiary of Highland's.</p> <p>11 Q. Okay. Well, the next bullet</p> <p>12 point says that, "Highland did not inform</p> <p>13 HarbourVest that it undertook the</p> <p>14 transfers to siphon assets away from Acis,</p> <p>15 L.P., and that such transfers would</p> <p>16 prevent Mr. Terry from collecting on the</p> <p>17 Arbitration Award."</p> <p>18 So if your understanding was</p> <p>19 that Highland was responsible for the</p> <p>20 arbitration award, then why is it relevant</p> <p>21 that Highland siphoned assets away from</p> <p>22 Acis, L.P.?</p> <p>23 MS. WEISGERBER: Objection to</p> <p>24 form. Misstates testimony.</p> <p>25 Can you clarify that question,</p>
<p style="text-align: right;">Page 48</p> <p>1 Confidential - Pugatch</p> <p>2 John? I think the beginning of it was</p> <p>3 a little muddled.</p> <p>4 BY MR. WILSON:</p> <p>5 Q. Well, this objection says that</p> <p>6 Highland had -- or response to objection,</p> <p>7 says that Highland had no intention of</p> <p>8 paying the arbitration award, but that</p> <p>9 seems to conflict with the next bullet</p> <p>10 point that says that it undertook</p> <p>11 transfers to siphon assets away from Acis,</p> <p>12 L.P., to prevent Mr. Terry from collecting</p> <p>13 on the arbitration award.</p> <p>14 So where were those assets being</p> <p>15 siphoned to?</p> <p>16 MS. WEISGERBER: Objection to</p> <p>17 form and foundation.</p> <p>18 If you're capable of answering</p> <p>19 that question, Mike, you can.</p> <p>20 A. I don't know the specific</p> <p>21 details of where those assets were</p> <p>22 siphoned off to, other than it was to</p> <p>23 another Highland affiliate.</p> <p>24 Q. The next sentence says that,</p> <p>25 "Highland simply did not inform</p>	<p style="text-align: right;">Page 49</p> <p>1 Confidential - Pugatch</p> <p>2 HarbourVest and represented to HarbourVest</p> <p>3 that the reason for changing the portfolio</p> <p>4 manager for HCLOF was because Acis was</p> <p>5 toxic in the industry."</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And it seems when I read these</p> <p>9 documents that have been filed in the</p> <p>10 Highland bankruptcy, and also the Acis</p> <p>11 bankruptcy, that there's a difference in</p> <p>12 position as to which entity, being either</p> <p>13 Highland or HarbourVest, had the belief</p> <p>14 that the Acis name was toxic. Can you</p> <p>15 shed any light on that?</p> <p>16 MS. WEISGERBER: Objection to</p> <p>17 form.</p> <p>18 A. I can unequivocally say that the</p> <p>19 idea to change the portfolio manager or</p> <p>20 the idea that the Acis brand was toxic did</p> <p>21 not come from HarbourVest.</p> <p>22 Q. That was not at HarbourVest's</p> <p>23 suggestion or insistence?</p> <p>24 A. Absolutely not.</p> <p>25 Q. Well, whose suggestion was it</p>

<p style="text-align: right;">Page 50</p> <p>1 Confidential - Pugatch</p> <p>2 that the Acis name was toxic?</p> <p>3 A. Somebody at Highland.</p> <p>4 Q. Do you know who?</p> <p>5 A. I don't recall the conversation</p> <p>6 where that first came up or who said, or</p> <p>7 who at Highland said that.</p> <p>8 Q. But that conversation did occur</p> <p>9 prior to HarbourVest's investment?</p> <p>10 A. Yes.</p> <p>11 Q. So Acis was previously the</p> <p>12 portfolio manager for HCLOF prior to</p> <p>13 November 15, 2017, and now November 17 --</p> <p>14 or 15th, 2017, the portfolio manager was</p> <p>15 changed.</p> <p>16 And what is HarbourVest's</p> <p>17 position as to why that change in</p> <p>18 portfolio manager damaged it?</p> <p>19 MS. WEISGERBER: Objection;</p> <p>20 form, objection to the extent it calls</p> <p>21 for a legal conclusion.</p> <p>22 Mike, you can answer --</p> <p>23 MR. WILSON: I'm not asking for</p> <p>24 a -- with all due respect, I'm not</p> <p>25 asking for a legal conclusion. I'm</p>	<p style="text-align: right;">Page 51</p> <p>1 Confidential - Pugatch</p> <p>2 asking for his understanding why the</p> <p>3 change in the portfolio manager</p> <p>4 damaged HarbourVest.</p> <p>5 MS. WEISGERBER: Same objection.</p> <p>6 You can provide any</p> <p>7 non-privileged answer that you have,</p> <p>8 Mike, if any.</p> <p>9 A. Ultimately my understanding is</p> <p>10 that that change in portfolio manager and</p> <p>11 the subsequent litigation between Acis,</p> <p>12 Highland, and Josh Terry led to material</p> <p>13 diminution in value, as it relates to the</p> <p>14 underlying assets of HCLOF stemming from</p> <p>15 Highland's decision not to comply with the</p> <p>16 arbitration award to Mr. Terry.</p> <p>17 Q. Okay. Now, if you go up to</p> <p>18 Page 4 in this document, it says that on</p> <p>19 October 27th, and this is Paragraph 11</p> <p>20 now, "On October 27, 2017, Acis' portfolio</p> <p>21 management rights for HCLOF were</p> <p>22 transferred to Highland HCF"; is that</p> <p>23 correct?</p> <p>24 A. That sounds right, yes.</p> <p>25 Q. And this is over two weeks prior</p>
<p style="text-align: right;">Page 52</p> <p>1 Confidential - Pugatch</p> <p>2 to HarbourVest's investment, correct?</p> <p>3 A. Correct.</p> <p>4 Q. So HarbourVest had full</p> <p>5 knowledge that that the portfolio manager</p> <p>6 of HCLOF was being changed prior to its</p> <p>7 investment, correct?</p> <p>8 A. Correct.</p> <p>9 MS. WEISGERBER: Objection to</p> <p>10 form.</p> <p>11 And just to clarify, you're</p> <p>12 asking him, HarbourVest, he's</p> <p>13 testifying on behalf of himself. I</p> <p>14 could just take a standing objection</p> <p>15 to that because I know sometimes</p> <p>16 you're just saying HarbourVest meaning</p> <p>17 Mike, so...</p> <p>18 BY MR. WILSON:</p> <p>19 Q. Okay. And just to be clear,</p> <p>20 HCLOF changed its portfolio manager on</p> <p>21 October 27, 2017, but after the Acis</p> <p>22 bankruptcy was initiated the Chapter 11</p> <p>23 trustee made changes to the portfolio</p> <p>24 manager, correct?</p> <p>25 MS. WEISGERBER: Objection to</p>	<p style="text-align: right;">Page 53</p> <p>1 Confidential - Pugatch</p> <p>2 form, foundation.</p> <p>3 A. I know there were changes</p> <p>4 subsequent to the Acis bankruptcy, to the</p> <p>5 underlying management of the Acis CLOs.</p> <p>6 Q. All right. I'm going to go back</p> <p>7 to Paragraph 37, and I want to look at</p> <p>8 these next two bullet points.</p> <p>9 It says that, in the third</p> <p>10 bullet point, that "Highland indicated to</p> <p>11 HarbourVest that the dispute with</p> <p>12 Mr. Terry (which appeared on a litigation</p> <p>13 schedule presented to HarbourVest during</p> <p>14 diligence) would have no impact on</p> <p>15 investment activities."</p> <p>16 And that would be the opinion of</p> <p>17 Highland, correct?</p> <p>18 MS. WEISGERBER: Objection to</p> <p>19 form. The opinion of Highland? Is</p> <p>20 that what you meant to ask?</p> <p>21 MR. WILSON: Right.</p> <p>22 BY MR. WILSON:</p> <p>23 Q. That's Highland expressing its</p> <p>24 opinion to HarbourVest, correct?</p> <p>25 MS. WEISGERBER: Objection to</p>

<p style="text-align: right;">Page 54</p> <p>1 Confidential - Pugatch</p> <p>2 form.</p> <p>3 A. I would just say Highland</p> <p>4 presented that as facts to HarbourVest.</p> <p>5 Q. Okay. And the next one, it says</p> <p>6 that "Highland expressed confidence in the</p> <p>7 ability of HCLOF to reset or redeem the</p> <p>8 CLOs notwithstanding that Highland was</p> <p>9 using HCLOF as part of its scheme to avoid</p> <p>10 the pending Arbitration Award."</p> <p>11 That's again an opinion, right,</p> <p>12 that Highland expressed confidence in the</p> <p>13 ability of HCLOF?</p> <p>14 MS. WEISGERBER: Objection to</p> <p>15 form. Objection to the extent it</p> <p>16 calls for a legal conclusion.</p> <p>17 A. Ultimately, their ability, or</p> <p>18 HCLOF's ability to reset or redeem the</p> <p>19 CLOs would be subject to market conditions</p> <p>20 and the ability to actually affect those</p> <p>21 transactions, but they expressed their,</p> <p>22 you know, their belief or view in HCLOF's</p> <p>23 ability to do that notwithstanding the,</p> <p>24 that change in portfolio manager.</p> <p>25 Q. Well, in Paragraph 39 on that</p>	<p style="text-align: right;">Page 55</p> <p>1 Confidential - Pugatch</p> <p>2 same page, it says, "In reliance on</p> <p>3 Highland's misrepresentations and</p> <p>4 omissions, HarbourVest invested in HCLOF."</p> <p>5 Now, HarbourVest is a</p> <p>6 sophisticated investor, correct?</p> <p>7 A. Correct.</p> <p>8 Q. And if we were to go to</p> <p>9 Paragraph 36, it says, right here in the</p> <p>10 middle, "These facts were material:</p> <p>11 indeed, HarbourVest expressed concern and</p> <p>12 requested further information regarding</p> <p>13 the Transfers, the Arbitration Award, and</p> <p>14 their implications for HCLOF, and the</p> <p>15 investment's closing date was delayed."</p> <p>16 And the closing date was</p> <p>17 ultimately November 15, 2017, correct?</p> <p>18 A. Correct.</p> <p>19 Q. What was the initial closing</p> <p>20 date that had to be delayed?</p> <p>21 A. I believe it was scheduled for</p> <p>22 November 1st.</p> <p>23 Q. So HarbourVest had full</p> <p>24 knowledge of these facts that it, that it</p> <p>25 lays out here forming the basis of the</p>
<p style="text-align: right;">Page 56</p> <p>1 Confidential - Pugatch</p> <p>2 alleged misrepresentations, and they</p> <p>3 requested further information regarding</p> <p>4 those facts.</p> <p>5 Did they receive any further</p> <p>6 information?</p> <p>7 MR. MORRIS: Objection to the</p> <p>8 form of the question.</p> <p>9 MS. WEISGERBER: Objection to</p> <p>10 form. Misstates testimony.</p> <p>11 A. We did have subsequent</p> <p>12 conversations and, I believe, receive</p> <p>13 subsequent information describing the</p> <p>14 intent around, and the, you know, new</p> <p>15 structure, pro forma structure, of the</p> <p>16 action that Highland had undertaken. And</p> <p>17 part of the reason for the delay in the</p> <p>18 closing was to ensure that we had adequate</p> <p>19 time to diligence those changes, ask</p> <p>20 questions, in connection with a thorough</p> <p>21 due diligence process, and ensure that the</p> <p>22 underlying legal structure was still</p> <p>23 sound.</p> <p>24 Q. And HarbourVest was investing</p> <p>25 over \$73 million, correct?</p>	<p style="text-align: right;">Page 57</p> <p>1 Confidential - Pugatch</p> <p>2 A. Right.</p> <p>3 Q. And HarbourVest had made</p> <p>4 investments of this nature previously,</p> <p>5 correct?</p> <p>6 A. We did.</p> <p>7 MS. WEISGERBER: Objection to</p> <p>8 form.</p> <p>9 A. HarbourVest has made hundreds of</p> <p>10 investment over its years, yes.</p> <p>11 Q. And HarbourVest has conducted</p> <p>12 due diligence regarding its investments in</p> <p>13 the past, correct?</p> <p>14 A. Correct.</p> <p>15 Q. And HarbourVest received</p> <p>16 additional information on items of concern</p> <p>17 and reviewed that information and</p> <p>18 satisfied itself that this was an</p> <p>19 appropriate investment, correct?</p> <p>20 MS. WEISGERBER: Objection to</p> <p>21 form. Misstates testimony.</p> <p>22 A. On the back of</p> <p>23 misrepresentations by Highland, yes.</p> <p>24 MR. WILSON: Well, I think</p> <p>25 that's nonresponsive and I object.</p>

<p style="text-align: right;">Page 58</p> <p>1 Confidential - Pugatch</p> <p>2 Q. I'm just, I'm just, reading from</p> <p>3 your pleading that you filed in the</p> <p>4 bankruptcy, where you say that these were</p> <p>5 material facts, and HarbourVest sought</p> <p>6 more information regarding these facts.</p> <p>7 And then you've testified that they</p> <p>8 performed additional due diligence</p> <p>9 regarding that information they received,</p> <p>10 and then they determined that the</p> <p>11 investment was appropriate, correct?</p> <p>12 MS. WEISGERBER: Objection to</p> <p>13 form. Misstates testimony.</p> <p>14 Go ahead, Mike.</p> <p>15 A. Yeah, that is correct, on the</p> <p>16 back of the additional information we</p> <p>17 received from Highland.</p> <p>18 And I would add, with, you know,</p> <p>19 with the benefit of external advisors and</p> <p>20 outside counsel reviewing those structural</p> <p>21 changes, as well.</p> <p>22 Q. All right. Thank you.</p> <p>23 Now, going back to your</p> <p>24 declaration, which we've marked as</p> <p>25 Exhibit 3, Paragraph 3 says that "The</p>	<p style="text-align: right;">Page 59</p> <p>1 Confidential - Pugatch</p> <p>2 unaudited net asset value of HCLOF, as of</p> <p>3 August 31, 2020, was \$44,587,820."</p> <p>4 And is that a – is that a book</p> <p>5 value, I guess?</p> <p>6 A. That is a fair market value, in</p> <p>7 accordance with the valuation policy of</p> <p>8 HCLOF.</p> <p>9 Q. Do you happen to know the net</p> <p>10 asset value of HCLOF as of February 1,</p> <p>11 2019? And I don't want an exact number, I</p> <p>12 just want an approximation.</p> <p>13 A. No, I do not.</p> <p>14 Q. Do you know where I could get</p> <p>15 that information?</p> <p>16 A. Presumably from the Debtor.</p> <p>17 Q. We'll come back to this in a</p> <p>18 minute, but I'm going to –</p> <p>19 MS. WEISGERBER: I think we've</p> <p>20 been going about an hour, John, if we</p> <p>21 can take a quick break.</p> <p>22 MR. WILSON: Yeah, a break is</p> <p>23 fine.</p> <p>24 MS. WEISGERBER: Actually,</p> <p>25 Mike...</p>
<p style="text-align: right;">Page 60</p> <p>1 Confidential - Pugatch</p> <p>2 MR. WILSON: I'm sorry? I</p> <p>3 didn't hear you.</p> <p>4 MS. WEISGERBER: It can be up to</p> <p>5 Mike.</p> <p>6 Mike, do you want to take a</p> <p>7 quick break? Do you want to keep</p> <p>8 going?</p> <p>9 MR. WILSON: No, we can, if</p> <p>10 y'all need a break, we can take a</p> <p>11 break, like 10, 15 minutes.</p> <p>12 THE WITNESS: Yeah, why don't we</p> <p>13 take a break, please.</p> <p>14 MR. WILSON: What do y'all</p> <p>15 prefer? 10, 15?</p> <p>16 MS. WEISGERBER: Ten minutes is</p> <p>17 fine.</p> <p>18 Mike, is that good with you.</p> <p>19 THE WITNESS: Yeah, ten-minute</p> <p>20 break is fine.</p> <p>21 MR. WILSON: Okay. Well, we'll</p> <p>22 break till, let's say, 1:20 central</p> <p>23 time.</p> <p>24 THE WITNESS: Perfect.</p> <p>25 MR. WILSON: All right. Thanks</p>	<p style="text-align: right;">Page 61</p> <p>1 Confidential - Pugatch</p> <p>2 guys.</p> <p>3 (Recess taken.)</p> <p>4 MR. WILSON: Yes, I just sent</p> <p>5 out an E-mail with Exhibit 6, and I'm</p> <p>6 going to pull that up on the screen</p> <p>7 share, as well.</p> <p>8 (Whereupon, Exhibit 6, Offering</p> <p>9 Memorandum 122 pages, was marked for</p> <p>10 identification.)</p> <p>11 BY MR. WILSON:</p> <p>12 Q. All right. So this is the</p> <p>13 Offering Memorandum, and I'm looking at</p> <p>14 the bottom of Page 1 – I mean, the top of</p> <p>15 Page 1, I'm sorry.</p> <p>16 The Company that was being</p> <p>17 invested in is Highland CLO Funding, Ltd.</p> <p>18 Do you see that, Mr. Pugatch?</p> <p>19 MS. WEISGERBER: Objection to</p> <p>20 form.</p> <p>21 A. I do. Okay.</p> <p>22 Q. And then this document defines</p> <p>23 Highland, as Highland Capital Management,</p> <p>24 L.P. Do you see that?</p> <p>25 A. Yes.</p>



<p style="text-align: right;">Page 62</p> <p>1 Confidential - Pugatch</p> <p>2 Q. Okay. Now, if we go down to, I</p> <p>3 guess it's Page 8 of this document, and</p> <p>4 this first full paragraph at the top, it</p> <p>5 says, "No voting member of the Advisory</p> <p>6 Board shall be a controlled affiliate of</p> <p>7 Highland."</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. And then it also says that, "It</p> <p>11 being understood that none of CLO Holdco</p> <p>12 Ltd., it's wholly-owned subsidiaries, or</p> <p>13 any of their respective directors or</p> <p>14 trustees shall be deemed to be a</p> <p>15 controlled affiliate of Highland, due to</p> <p>16 their preexisting non-discretionary</p> <p>17 advisory relationship with Highland."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. So there were no affiliates of</p> <p>21 Highland on the Advisory Board, correct?</p> <p>22 MS. WEISGERBER: Objection to</p> <p>23 form.</p> <p>24 A. For voting purposes under the</p> <p>25 document, that is how this reads, correct.</p>	<p style="text-align: right;">Page 63</p> <p>1 Confidential - Pugatch</p> <p>2 MR. WILSON: All right. I'm</p> <p>3 going to turn to the next exhibit.</p> <p>4 And this is going to be Exhibit No. 7</p> <p>5 coming in the E-mail. I'm also going</p> <p>6 to put Exhibit No. 7 on the screen.</p> <p>7 (Whereupon, Exhibit 7, Share</p> <p>8 Subscription and Transfer Agreement 31</p> <p>9 pages, was marked for identification.)</p> <p>10 Q. All right. Do you see that?</p> <p>11 The "Subscription and Transfer Agreement</p> <p>12 For Ordinary Shares"?</p> <p>13 A. Yep.</p> <p>14 Q. All right. So what this</p> <p>15 document says is that, it repeats that</p> <p>16 Highland HCLF Advisory Ltd. is the</p> <p>17 portfolio manager. Highland CLO Funding</p> <p>18 Ltd. is the fund, and CLO Holdco Ltd. is</p> <p>19 the existing shareholder.</p> <p>20 And if we go down to the bottom</p> <p>21 half of this page, it says that</p> <p>22 HarbourVest was acquiring its shares in</p> <p>23 this investment from CLO Holdco, correct?</p> <p>24 A. Yes.</p> <p>25 MS. WEISGERBER: Objection to</p>
<p style="text-align: right;">Page 64</p> <p>1 Confidential - Pugatch</p> <p>2 form.</p> <p>3 Q. And prior to the date of this</p> <p>4 document, which I believe is November 15,</p> <p>5 2017, CLO Holdco held 100 percent of the</p> <p>6 shares of HCLOF, correct?</p> <p>7 MS. WEISGERBER: Objection to</p> <p>8 form, foundation.</p> <p>9 A. I don't recall. I know they</p> <p>10 were the largest, the largest investor. I</p> <p>11 don't recall if it was 100 percent.</p> <p>12 Q. Well, if you look at the chart</p> <p>13 below Paragraph A, it says that CLO Holdco</p> <p>14 Ltd. immediately prior to the placing on</p> <p>15 100 percent share percentage.</p> <p>16 Do you have any reason to</p> <p>17 disagree with that?</p> <p>18 A. No.</p> <p>19 MS. WEISGERBER: Objection to</p> <p>20 form.</p> <p>21 Q. All right. Now, below CLO</p> <p>22 Holdco Ltd., these are the five</p> <p>23 HarbourVest entities that have filed</p> <p>24 proofs of claim in this bankruptcy,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 65</p> <p>1 Confidential - Pugatch</p> <p>2 MS. WEISGERBER: Objection to</p> <p>3 form.</p> <p>4 A. Those are the five HarbourVest</p> <p>5 entities with a direct investment in</p> <p>6 HCLOF.</p> <p>7 Q. And each one of those entities</p> <p>8 has filed a proof of claim in this</p> <p>9 bankruptcy, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And the largest – I think we</p> <p>12 discussed this earlier, but Dover Street</p> <p>13 IX is the largest of those investors, with</p> <p>14 a 35.49 percent share percentage, correct?</p> <p>15 MS. WEISGERBER: Objection to</p> <p>16 form.</p> <p>17 A. Correct.</p> <p>18 Q. And if you take the total of</p> <p>19 those investments of the HarbourVest</p> <p>20 entities, you get a 49.98 percent total.</p> <p>21 Is that your understanding?</p> <p>22 MS. WEISGERBER: Objection to</p> <p>23 form.</p> <p>24 A. I know it has 49 percent, and</p> <p>25 some percentage. I'll take your math as</p>

<p style="text-align: right;">Page 66</p> <p>1 Confidential - Pugatch</p> <p>2 correct.</p> <p>3 Q. And 49.98 percent is larger than</p> <p>4 the next largest shareholder, which is CLO</p> <p>5 Holdco which is 49.02 percent, correct?</p> <p>6 MS. WEISGERBER: Objection to</p> <p>7 form.</p> <p>8 A. In taking all of the HarbourVest</p> <p>9 entities, collectively, yes, correct.</p> <p>10 Q. And so I want to go back to</p> <p>11 earlier where we saw in documents filed by</p> <p>12 HarbourVest, where it refers to itself as</p> <p>13 a passive investor. What do you, I</p> <p>14 apologize if I've already asked you this</p> <p>15 question, but what do you mean by passive</p> <p>16 investor?</p> <p>17 A. Meaning we were a minority</p> <p>18 investor in HCLOF. HCLOF was fully</p> <p>19 controlled by Highland as the investment</p> <p>20 manager. So HarbourVest did not have any</p> <p>21 governance, rights, or control as it</p> <p>22 related to the ongoing investment</p> <p>23 management and decisionmaking of HCLOF.</p> <p>24 Q. HarbourVest has the largest</p> <p>25 percentage of the shares of any of these</p>	<p style="text-align: right;">Page 67</p> <p>1 Confidential - Pugatch</p> <p>2 investors, correct?</p> <p>3 MS. WEISGERBER: Objection to</p> <p>4 form.</p> <p>5 A. Taken collectively, yes.</p> <p>6 Q. And HarbourVest owned one of the</p> <p>7 two spots on the Advisory Board, correct?</p> <p>8 MS. WEISGERBER: Objection to</p> <p>9 form.</p> <p>10 A. Correct.</p> <p>11 Q. And if you look down below the</p> <p>12 HarbourVest entities on this chart, you</p> <p>13 see that Highland Capital Management, L.P.</p> <p>14 is purchasing a .63 percent interest,</p> <p>15 correct?</p> <p>16 MS. WEISGERBER: Objection to</p> <p>17 form. The document speaks for itself.</p> <p>18 A. According to the document, yes.</p> <p>19 Q. Do you have any reason to</p> <p>20 disagree with that document?</p> <p>21 MS. WEISGERBER: Objection to</p> <p>22 form.</p> <p>23 A. I do not.</p> <p>24 MR. WILSON: All right. I'm</p> <p>25 going to stop that screen share. I'm</p>
<p style="text-align: right;">Page 68</p> <p>1 Confidential - Pugatch</p> <p>2 going to E-mail out the next exhibit.</p> <p>3 This was Exhibit 8 that I just sent,</p> <p>4 and I'll pull it up on the screen</p> <p>5 share.</p> <p>6 (Whereupon, Exhibit 8, E-mail</p> <p>7 08/15/2017, was marked for</p> <p>8 identification.)</p> <p>9 Q. Now, I'll represent to you that</p> <p>10 I received this document this morning from</p> <p>11 your counsel. Do you recognize this</p> <p>12 E-mail? Have you seen it before?</p> <p>13 A. Yes, I have.</p> <p>14 Q. And this E-mail is sent by Brad</p> <p>15 Eden. I think you mentioned that he was</p> <p>16 one of the representatives that was</p> <p>17 involved in the pre-investment discussions</p> <p>18 with Highland?</p> <p>19 A. Correct.</p> <p>20 Q. And I think you told me that</p> <p>21 Dustin Willard was involved in those</p> <p>22 discussions on the HarbourVest side,</p> <p>23 correct?</p> <p>24 A. Correct.</p> <p>25 Q. And so this is an E-mail sent on</p>	<p style="text-align: right;">Page 69</p> <p>1 Confidential - Pugatch</p> <p>2 August 15, 2017 from Brad Eden to Dustin</p> <p>3 Willard. Are you familiar with Thomas</p> <p>4 Surgent?</p> <p>5 A. Yes.</p> <p>6 Q. Was he involved in those</p> <p>7 discussions with you and HarbourVest as</p> <p>8 well?</p> <p>9 A. In some of those discussions,</p> <p>10 yes.</p> <p>11 Q. Okay. So when it says, "Dustin,</p> <p>12 attached is a legal summary. Of course,</p> <p>13 Thomas is available to answer any</p> <p>14 follow-up questions." Do you know if</p> <p>15 Thomas was consulted with any follow-up</p> <p>16 questions?</p> <p>17 A. I recall --</p> <p>18 MS. WEISGERBER: Objection to</p> <p>19 form.</p> <p>20 A. -- having follow-up</p> <p>21 conversations with Highland, I don't --</p> <p>22 around these legal summaries. I don't</p> <p>23 recall with whom.</p> <p>24 Q. Okay. And just to show you the</p> <p>25 attachment that's referenced in the</p>

<p style="text-align: right;">Page 70</p> <p>1 Confidential - Pugatch</p> <p>2 E-mail, this says that SEC financial</p> <p>3 crisis matter crusader, Terry, Daugherty</p> <p>4 and UBS. So and then I guess these are --</p> <p>5 this is information provided by Highland</p> <p>6 to HarbourVest regarding these matters.</p> <p>7 Why were these particular matters</p> <p>8 addressed in this E-mail, to your</p> <p>9 knowledge?</p> <p>10 MS. WEISGERBER: Objection to</p> <p>11 form and foundation.</p> <p>12 A. These were all outstanding</p> <p>13 litigation matters that we had become</p> <p>14 aware of in connection with our diligence</p> <p>15 that we asked for a further explanation</p> <p>16 from Highland on the underlying substance.</p> <p>17 Q. Now, did you become</p> <p>18 independently aware of these in the course</p> <p>19 of your due diligence, or were these</p> <p>20 brought to your attention by Highland</p> <p>21 first?</p> <p>22 A. I don't know.</p> <p>23 MS. WEISGERBER: Objection to</p> <p>24 form.</p> <p>25 Q. You don't know?</p>	<p style="text-align: right;">Page 71</p> <p>1 Confidential - Pugatch</p> <p>2 A. (Nods.)</p> <p>3 Q. Okay. And particularly with</p> <p>4 respect to Mr. Terry, is it your opinion</p> <p>5 that there are any material</p> <p>6 misrepresentations made in this summary?</p> <p>7 MS. WEISGERBER: Objection to</p> <p>8 form. Objection to the extent it</p> <p>9 calls for a legal conclusion.</p> <p>10 Mike, to the extent you have an</p> <p>11 answer that does not infringe on</p> <p>12 conversations with counsel, you can</p> <p>13 provide it.</p> <p>14 A. Yeah, I would say our</p> <p>15 understanding or interpretation of that,</p> <p>16 or the answer to that question would be</p> <p>17 based on conversations with counsel.</p> <p>18 Q. Well, this document was provided</p> <p>19 to you in the course of the discussions</p> <p>20 prior to HarbourVest's investment, and</p> <p>21 you've stated that Highland, or you've</p> <p>22 taken the position that Highland made</p> <p>23 material misrepresentations to</p> <p>24 HarbourVest, in the course of these</p> <p>25 discussions.</p>
<p style="text-align: right;">Page 72</p> <p>1 Confidential - Pugatch</p> <p>2 Does this document evidence</p> <p>3 those material misrepresentations?</p> <p>4 MS. WEISGERBER: Objection to</p> <p>5 form. Objection to the extent it</p> <p>6 calls for a legal conclusion.</p> <p>7 A. Yeah, same answer as previous.</p> <p>8 Q. Well, I'm not asking you for a</p> <p>9 legal conclusion. I'm asking you are</p> <p>10 there misrepresentations in this document</p> <p>11 that you claim Highland made?</p> <p>12 MS. WEISGERBER: Same</p> <p>13 objections.</p> <p>14 I think misrepresentations calls</p> <p>15 for a legal conclusion regarding legal</p> <p>16 misrepresentations, actionable</p> <p>17 misrepresentations. So if he doesn't</p> <p>18 have any non-privileged testimony to</p> <p>19 give, he can't give any testimony.</p> <p>20 MR. WILSON: Well, I'm here</p> <p>21 today to investigate HarbourVest's</p> <p>22 claim and one of the basis of</p> <p>23 HarbourVest's claim is</p> <p>24 misrepresentation. So I'm trying to</p> <p>25 figure out what those</p>	<p style="text-align: right;">Page 73</p> <p>1 Confidential - Pugatch</p> <p>2 misrepresentations were.</p> <p>3 And I would ask that the witness</p> <p>4 tell me if there's a misrepresentation</p> <p>5 in this document that was provided in</p> <p>6 this E-mail.</p> <p>7 MS. WEISGERBER: Same</p> <p>8 objections.</p> <p>9 Mike, if you have a general</p> <p>10 understanding of, generally,</p> <p>11 misrepresentations that HarbourVest</p> <p>12 believes were made in connection or</p> <p>13 regarding the Terry litigation,</p> <p>14 et cetera, you can provide that</p> <p>15 information.</p> <p>16 THE WITNESS: Yeah, sure.</p> <p>17 A. So in general, my understanding</p> <p>18 and the way that Highland had</p> <p>19 characterized the ongoing litigation with</p> <p>20 Mr. Terry was that it was nothing more</p> <p>21 than an employment dispute with a former</p> <p>22 employee and that, you know, the</p> <p>23 arbitration -- well, actually, it was</p> <p>24 before the Arbitration Board, but the</p> <p>25 ongoing litigation had no impact, bearing,</p>



<p style="text-align: right;">Page 74</p> <p>1 Confidential - Pugatch</p> <p>2 or ultimate result on the underlying CLOs</p> <p>3 that Highland managed, including the Acis</p> <p>4 CLOs.</p> <p>5 Q. So you're saying that</p> <p>6 Highland --</p> <p>7 MR. MORRIS: John, I'm sorry to</p> <p>8 interrupt. Before you go on, somebody</p> <p>9 with the initials DSD just joined the</p> <p>10 deposition. Can you please identify</p> <p>11 yourself?</p> <p>12 MR. DRAPER: This is Douglas</p> <p>13 Draper. I just changed machines.</p> <p>14 MR. MORRIS: Okay. No problem,</p> <p>15 Doug. Thank you.</p> <p>16 BY MR. WILSON:</p> <p>17 Q. So, and I'm not trying to put</p> <p>18 words in your mouth, but is the gist of</p> <p>19 what you're telling me that Highland</p> <p>20 represented that this was a minor dispute</p> <p>21 with a former employee and it would not</p> <p>22 affect its CLO business?</p> <p>23 A. Correct.</p> <p>24 MS. WEISGERBER: Objection to</p> <p>25 form.</p>	<p style="text-align: right;">Page 75</p> <p>1 Confidential - Pugatch</p> <p>2 A. Correct.</p> <p>3 Q. Well, are there any more</p> <p>4 specific E-mails or written</p> <p>5 communications, that you're aware of, that</p> <p>6 would contain misrepresentations by</p> <p>7 Highland to HarbourVest?</p> <p>8 MS. WEISGERBER: Objection to</p> <p>9 form.</p> <p>10 Are you asking about from</p> <p>11 today's production, or are you asking</p> <p>12 about just, in general?</p> <p>13 MR. WILSON: Well, you produced</p> <p>14 two E-mails to us today. I'm just</p> <p>15 asking if there's anything else he's</p> <p>16 aware of where there's written</p> <p>17 misrepresentations from Highland to</p> <p>18 HarbourVest.</p> <p>19 MS. WEISGERBER: Mike, if you</p> <p>20 have an answer separate from</p> <p>21 conversations with lawyers, et cetera,</p> <p>22 you can certainly answer.</p> <p>23 A. Yeah, my understanding of the</p> <p>24 documents I reviewed that were part of the</p> <p>25 production to you earlier today, there is</p>
<p style="text-align: right;">Page 76</p> <p>1 Confidential - Pugatch</p> <p>2 another document that would also include</p> <p>3 misrepresentations on the part of this,</p> <p>4 the Terry lawsuit and ultimate impact on</p> <p>5 the CLO business.</p> <p>6 BY MR. WILSON:</p> <p>7 Q. And what document is that?</p> <p>8 A. That was the E-mail, E-mail with</p> <p>9 an attachment around a response to a Wall</p> <p>10 Street Journal article and some of the</p> <p>11 content in the E-mail itself.</p> <p>12 Q. Okay. We'll look at that one.</p> <p>13 What was the -- HarbourVest had</p> <p>14 seen the Terry Arbitration Award, correct?</p> <p>15 MS. WEISGERBER: Objection to</p> <p>16 form.</p> <p>17 Q. Prior to making its investment</p> <p>18 in HCLOF?</p> <p>19 A. We were aware of the existence</p> <p>20 and the outcome of the Arbitration Award.</p> <p>21 Q. Had you read the Arbitration</p> <p>22 Award?</p> <p>23 A. No.</p> <p>24 Q. Well, how did you know the</p> <p>25 substance of the Arbitration Award without</p>	<p style="text-align: right;">Page 77</p> <p>1 Confidential - Pugatch</p> <p>2 reading it?</p> <p>3 MS. WEISGERBER: Objection to</p> <p>4 form.</p> <p>5 A. We were informed by Highland of</p> <p>6 the outcome of the ongoing litigation and</p> <p>7 the outcome of the Arbitration Award.</p> <p>8 Q. Was that part of the</p> <p>9 documentation that you requested Highland</p> <p>10 provide you to continue your due</p> <p>11 diligence, before making the investment?</p> <p>12 MS. WEISGERBER: Objection to</p> <p>13 form.</p> <p>14 A. We certainly requested more</p> <p>15 color around the outcome of that, and any</p> <p>16 impact that it could have to HCLOF or the</p> <p>17 ongoing viability of Highland's CLO</p> <p>18 business.</p> <p>19 Q. And what, what were you provided</p> <p>20 with respect to the Terry Arbitration</p> <p>21 Award?</p> <p>22 MS. WEISGERBER: Objection to</p> <p>23 form.</p> <p>24 A. The existence of that award, the</p> <p>25 quantum of that award, the judgment of</p>

<p style="text-align: right;">Page 78</p> <p>1 Confidential - Pugatch</p> <p>2 just under \$8 million in connection with</p> <p>3 that award. That was the information that</p> <p>4 was disclosed at – and represented as a</p> <p>5 settlement or, you know, arbitration</p> <p>6 ruling, in connection with the employee</p> <p>7 litigation, wrongful termination suit.</p> <p>8 Q. So did HarbourVest not request a</p> <p>9 copy of the Arbitration Award to review?</p> <p>10 MS. WEISGERBER: Objection to</p> <p>11 form.</p> <p>12 A. We did not specifically, no.</p> <p>13 Q. And so, to this day, have you</p> <p>14 read the Arbitration Award?</p> <p>15 A. I have not.</p> <p>16 MS. WEISGERBER: Objection to</p> <p>17 form.</p> <p>18 Q. You have not?</p> <p>19 A. I have not.</p> <p>20 MR. WILSON: Okay. I think my</p> <p>21 last E-mail went out with Exhibit 9 on</p> <p>22 it. I will pull that up.</p> <p>23 Q. Can you see that on the screen</p> <p>24 share?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 79</p> <p>1 Confidential - Pugatch</p> <p>2 (Whereupon, Exhibit 9,</p> <p>3 11/29/2017 E-mail with cover letter</p> <p>4 Highland Capital Management, was</p> <p>5 marked for identification.)</p> <p>6 Q. Okay. So I think this is out of</p> <p>7 order, but this should have been first in</p> <p>8 the exhibit. But this is an E-mail from</p> <p>9 Hunter Covitz to Dustin Willard, Michael</p> <p>10 Pugatch and Nick Bellisario, carbon copies</p> <p>11 to Trey Parker and Brad Eden.</p> <p>12 And Trey Parker and Brad Eden</p> <p>13 are Highland affiliates, right?</p> <p>14 A. Yes.</p> <p>15 Q. And we've talked about Dustin</p> <p>16 Willard. Who's Nick Bellisario?</p> <p>17 A. He was another member of the</p> <p>18 HarbourVest team.</p> <p>19 Q. And was he on the, the</p> <p>20 four-member board that you talked about</p> <p>21 earlier, that made the investment</p> <p>22 decision?</p> <p>23 A. No, he was the junior member of</p> <p>24 the investment team that I alluded to.</p> <p>25 Q. Okay. And this, this E-mail</p>
<p style="text-align: right;">Page 80</p> <p>1 Confidential - Pugatch</p> <p>2 came out about two weeks after the</p> <p>3 HarbourVest investment, correct?</p> <p>4 A. Correct.</p> <p>5 Q. And it's your opinion or</p> <p>6 position that this E-mail contains</p> <p>7 misrepresentations that Highland made to</p> <p>8 HarbourVest?</p> <p>9 MS. WEISGERBER: Objection to</p> <p>10 form. Objection to the extent it</p> <p>11 calls for a legal conclusion.</p> <p>12 A. Yes.</p> <p>13 Q. And there was a Wall Street</p> <p>14 Journal article that had come out shortly</p> <p>15 before this E-mail, correct?</p> <p>16 A. Correct.</p> <p>17 Q. And how did you became aware of</p> <p>18 that Wall Street Journal article?</p> <p>19 A. I certainly would have seen it.</p> <p>20 I may have been sent it separately by</p> <p>21 Highland, I don't recall.</p> <p>22 Q. You don't recall if you saw it</p> <p>23 independently or Highland telling you</p> <p>24 about it?</p> <p>25 A. I don't.</p>	<p style="text-align: right;">Page 81</p> <p>1 Confidential - Pugatch</p> <p>2 Q. And what did you – what was</p> <p>3 your reaction to receiving these E-mails</p> <p>4 from Highland regarding that article?</p> <p>5 MS. WEISGERBER: Objection to</p> <p>6 form.</p> <p>7 A. The article or the accusations</p> <p>8 in the article were something that</p> <p>9 required more explanation from our</p> <p>10 perspective.</p> <p>11 Q. And attached to this E-mail</p> <p>12 was – we just scrolled through it a</p> <p>13 second ago – but a letter from James</p> <p>14 Dondero that was sent to the</p> <p>15 editor-in-chief of the Wall Street</p> <p>16 Journal, Mr. Gerard Baker, on November</p> <p>17 28th.</p> <p>18 And did you read this</p> <p>19 attachment?</p> <p>20 A. Yes.</p> <p>21 Q. And did this attachment to this</p> <p>22 E-mail aleve your concerns that you had</p> <p>23 regarding the article?</p> <p>24 MS. WEISGERBER: Objection to</p> <p>25 form.</p>

<p style="text-align: right;">Page 82</p> <p>1 Confidential - Pugatch</p> <p>2 A. I wouldn't say alleviated the</p> <p>3 concerns but certainly provided an</p> <p>4 explanation or refute to some of the</p> <p>5 claims made in the, in the article.</p> <p>6 Q. And do you contend that this</p> <p>7 letter that was written to Gerard Baker</p> <p>8 and provided later to HarbourVest was a</p> <p>9 material misrepresentation?</p> <p>10 MS. WEISGERBER: Objection to</p> <p>11 form.</p> <p>12 Don't answer that, Mike. It</p> <p>13 calls for a legal conclusion.</p> <p>14 MR. WILSON: I'm asking for his</p> <p>15 understanding.</p> <p>16 Q. Do you contend that there's</p> <p>17 misrepresentations in this letter?</p> <p>18 MS. WEISGERBER: Material</p> <p>19 misrepresentations absolutely calls</p> <p>20 for a legal conclusion, John.</p> <p>21 MR. WILSON: Well, I've</p> <p>22 shortened it to misrepresentations.</p> <p>23 So I just want to know if he thinks</p> <p>24 there's anything that's misrepresented</p> <p>25 in this letter.</p>	<p style="text-align: right;">Page 83</p> <p>1 Confidential - Pugatch</p> <p>2 MS. WEISGERBER: Same</p> <p>3 objections.</p> <p>4 Mike, if you have an</p> <p>5 understanding, separate from</p> <p>6 conversations with lawyers, you can</p> <p>7 answer.</p> <p>8 A. I would need to reread the</p> <p>9 letter to definitively answer that outside</p> <p>10 of conversations with counsel.</p> <p>11 Q. But to be clear, this letter was</p> <p>12 issued two weeks after HarbourVest's</p> <p>13 investment, correct?</p> <p>14 A. Correct.</p> <p>15 MS. WEISGERBER: Objection;</p> <p>16 asked and answered.</p> <p>17 MR. WILSON: I'm going to now</p> <p>18 send out the next exhibit, which is</p> <p>19 going to be Exhibit No. 10.</p> <p>20 (Whereupon, Exhibit 10, 2004</p> <p>21 Examination of Investor in Highland</p> <p>22 CLO Funding Ltd. 10/10/2018, was</p> <p>23 marked for identification.)</p> <p>24 MR. WILSON: It just went</p> <p>25 through. So I'm going to pull it up</p>
<p style="text-align: right;">Page 84</p> <p>1 Confidential - Pugatch</p> <p>2 on my screen share.</p> <p>3 So this Exhibit 10, the document</p> <p>4 I received this morning, filed in the</p> <p>5 Acis bankruptcy, it looks like, well,</p> <p>6 let's see, dated in, dated October 10,</p> <p>7 2018.</p> <p>8 BY MR. WILSON:</p> <p>9 Q. Have you seen this document</p> <p>10 before?</p> <p>11 A. Yes.</p> <p>12 Q. And it's a motion for 2004</p> <p>13 Examination of Investor in Highland CLO</p> <p>14 Funding, Ltd., correct?</p> <p>15 A. Sorry. Was there a question,</p> <p>16 John?</p> <p>17 Q. Yeah. I was just asking you to</p> <p>18 confirm that this was the motion for 2004</p> <p>19 Examination of Investor in Highland CLO</p> <p>20 Funding?</p> <p>21 A. Yes.</p> <p>22 Q. And so if I scroll down to</p> <p>23 Paragraph 6, which is on, it looks like</p> <p>24 it's on Page 4. In the second sentence,</p> <p>25 it says that "Although HCLOF/ALF was a one</p>	<p style="text-align: right;">Page 85</p> <p>1 Confidential - Pugatch</p> <p>2 time wholly-owned by an affiliate of</p> <p>3 Highland, it did an offering memorandum in</p> <p>4 November of 2017 and as a result, is now</p> <p>5 owned 49.985% by certain affiliates of a</p> <p>6 large investor and manager of private</p> <p>7 equity funds."</p> <p>8 And that's defined as investor.</p> <p>9 So the Investor is the HarbourVest</p> <p>10 entities collectively, correct?</p> <p>11 A. Correct.</p> <p>12 Q. All right. And then the next</p> <p>13 sentence, says that "Despite its large</p> <p>14 ownership percentage in HCLOF in the</p> <p>15 alleged millions in losses that will</p> <p>16 result if the Acis CLOs are not reset to</p> <p>17 make them consistent with prevailing</p> <p>18 market conditions the Investor has not yet</p> <p>19 appeared in this case or taken any</p> <p>20 position in this bankruptcy case."</p> <p>21 Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. Is that correct?</p> <p>24 MS. WEISGERBER: Objection to</p> <p>25 form.</p>

<p style="text-align: right;">Page 86</p> <p>1 Confidential - Pugatch</p> <p>2 A. Is what correct?</p> <p>3 Q. Well, I guess, I'm most</p> <p>4 concerned with this last part of the</p> <p>5 sentence. It starts with "The Investor</p> <p>6 has not yet appeared in this case or taken</p> <p>7 any position in the bankruptcy case."</p> <p>8 Do you agree with that?</p> <p>9 MS. WEISGERBER: Objection to</p> <p>10 form.</p> <p>11 Mike, if you want to look at the</p> <p>12 whole document, you're welcome to.</p> <p>13 This is not a document that's a</p> <p>14 HarbourVest-prepared document.</p> <p>15 BY MR. WILSON:</p> <p>16 Q. Maybe a better way of asking the</p> <p>17 question is: As of the date of this</p> <p>18 document, which was in October of 2018,</p> <p>19 had HarbourVest appeared in the Acis</p> <p>20 bankruptcy?</p> <p>21 A. No, we did not.</p> <p>22 Q. And had they asserted any</p> <p>23 positions regarding the Acis bankruptcy?</p> <p>24 A. Not through the court.</p> <p>25 MS. WEISGERBER: Objection to</p>	<p style="text-align: right;">Page 87</p> <p>1 Confidential - Pugatch</p> <p>2 form.</p> <p>3 Q. Okay. Had Highland encouraged</p> <p>4 HarbourVest to participate in the Acis</p> <p>5 bankruptcy?</p> <p>6 MS. WEISGERBER: Objection to</p> <p>7 form.</p> <p>8 A. No.</p> <p>9 Q. They did not?</p> <p>10 MS. WEISGERBER: Objection to</p> <p>11 form.</p> <p>12 Q. Highland did not encourage</p> <p>13 HarbourVest to participate in the Acis</p> <p>14 bankruptcy?</p> <p>15 A. When you say "participate," can</p> <p>16 you define that, please.</p> <p>17 Q. Well, appear in the case, as</p> <p>18 stated in this motion.</p> <p>19 A. No, they had not.</p> <p>20 Q. Did Harbour – I'm sorry – did</p> <p>21 Highland keep HarbourVest apprised of the</p> <p>22 events that occurred in the Acis</p> <p>23 bankruptcy?</p> <p>24 MS. WEISGERBER: Objection to</p> <p>25 form. I'm just going to restate my</p>
<p style="text-align: right;">Page 88</p> <p>1 Confidential - Pugatch</p> <p>2 objection to the extent you're asking</p> <p>3 questions about HarbourVest. This is</p> <p>4 Mr. Pugatch answering, based on his</p> <p>5 knowledge.</p> <p>6 A. We were kept informed from time</p> <p>7 to time throughout the Acis bankruptcy</p> <p>8 proceeding.</p> <p>9 Q. Well, did you, in fact, have</p> <p>10 weekly conference calls with Highland</p> <p>11 representatives regarding the Acis</p> <p>12 bankruptcy?</p> <p>13 MS. WEISGERBER: Objection to</p> <p>14 form.</p> <p>15 A. I don't recall them being</p> <p>16 weekly, no.</p> <p>17 Q. You can agree with me you</p> <p>18 participated in the conference calls with</p> <p>19 Highland regarding the Acis bankruptcy?</p> <p>20 A. Yes.</p> <p>21 MS. WEISGERBER: Same objection.</p> <p>22 Q. And on what, on what –</p> <p>23 MR. WILSON: Sorry. Strike</p> <p>24 that.</p> <p>25 Q. With what regularity would you</p>	<p style="text-align: right;">Page 89</p> <p>1 Confidential - Pugatch</p> <p>2 estimate those conference calls occurred,</p> <p>3 if it's not weekly?</p> <p>4 MS. WEISGERBER: Objection to</p> <p>5 form.</p> <p>6 A. From memory, maybe once, once a</p> <p>7 month on average. Sometimes more</p> <p>8 frequently, sometimes less frequently.</p> <p>9 Q. Did Highland provide you with</p> <p>10 documents and evidence that were filed in</p> <p>11 the Acis bankruptcy?</p> <p>12 MS. WEISGERBER: Objection to</p> <p>13 form.</p> <p>14 We're really starting to get</p> <p>15 pretty far afield here, John, from</p> <p>16 HarbourVest. You know, I'm not sure</p> <p>17 where you're going with this. This is</p> <p>18 a settlement motion that's teed up for</p> <p>19 the court.</p> <p>20 You're welcome to keep going,</p> <p>21 but at some point we're going to cut</p> <p>22 it off.</p> <p>23 MR. WILSON: Well, I think – I</p> <p>24 don't think I'm going to go too far</p> <p>25 down this path, but I think this</p>

<p style="text-align: right;">Page 90</p> <p>1 Confidential - Pugatch</p> <p>2 directly relates to the claims that</p> <p>3 HarbourVest has made. But I'll repeat</p> <p>4 my question.</p> <p>5 BY MR. WILSON:</p> <p>6 Q. Did Highland provide HarbourVest</p> <p>7 with documents and evidence that were</p> <p>8 filed in the Acis bankruptcy?</p> <p>9 MS. WEISGERBER: Objection to</p> <p>10 form.</p> <p>11 A. I don't recall what documents</p> <p>12 Highland may have provided to us, at that</p> <p>13 point in time.</p> <p>14 Q. I don't want you to recall</p> <p>15 specific documents that were provided, but</p> <p>16 did, did Highland provide documents from</p> <p>17 the Acis bankruptcy to HarbourVest?</p> <p>18 MS. WEISGERBER: Objection to</p> <p>19 form. Asked and answered.</p> <p>20 A. I don't recall.</p> <p>21 Q. You don't recall?</p> <p>22 A. (Nods.)</p> <p>23 Q. Would you dispute that between</p> <p>24 2018 and 2019 that Highland provided over</p> <p>25 40,000 pages of documents related to the</p>	<p style="text-align: right;">Page 91</p> <p>1 Confidential - Pugatch</p> <p>2 Acis bankruptcy to HarbourVest?</p> <p>3 MS. WEISGERBER: Objection to</p> <p>4 form, foundation.</p> <p>5 A. I don't know and I don't recall.</p> <p>6 Q. And the Acis plan became</p> <p>7 effective on February 1st, 2019. Is that</p> <p>8 your understanding?</p> <p>9 A. I believe so, yes.</p> <p>10 Q. And do you -- I asked you this</p> <p>11 earlier, but I'm going to ask again. Do</p> <p>12 you have any understanding of what the</p> <p>13 value of HCLOF was, at that date?</p> <p>14 A. I don't recall.</p> <p>15 MS. WEISGERBER: Objection to</p> <p>16 form.</p> <p>17 Q. You don't?</p> <p>18 A. I don't recall, no.</p> <p>19 Q. And there was an injunction put</p> <p>20 in place in the Acis bankruptcy that</p> <p>21 prevented certain actions with respect to</p> <p>22 HCLOF, correct?</p> <p>23 MS. WEISGERBER: Objection to</p> <p>24 form, foundation.</p> <p>25 MR. MALONEY: Join.</p>
<p style="text-align: right;">Page 92</p> <p>1 Confidential - Pugatch</p> <p>2 A. Yes.</p> <p>3 Q. Now, I'm going to go back up to</p> <p>4 Paragraph 2. This says that Acis LP</p> <p>5 manages the Acis CLOs, that certain</p> <p>6 portfolio management agreement between</p> <p>7 Acis, and then it goes on. So what are</p> <p>8 the Acis CLOs, as it relates to the</p> <p>9 investment that HarbourVest made?</p> <p>10 MR. MALONEY: Objection to the</p> <p>11 form of the question.</p> <p>12 MS. WEISGERBER: Objection to</p> <p>13 form.</p> <p>14 A. The Acis CLOs -- or HCLOF owned</p> <p>15 equity in certain of the Acis CLOs as a</p> <p>16 portion of its investment portfolio.</p> <p>17 Q. And I think you were trying to</p> <p>18 distinguish earlier between who the</p> <p>19 portfolio manager was. And that would</p> <p>20 depend on whether it was an Acis CLO or a</p> <p>21 Highland CLO; is that correct?</p> <p>22 MR. MALONEY: Objection to form.</p> <p>23 MS. WEISGERBER: Objection to</p> <p>24 form, misstates testimony.</p> <p>25 A. I was referencing the portfolio</p>	<p style="text-align: right;">Page 93</p> <p>1 Confidential - Pugatch</p> <p>2 manager of the underlying CLOs, yes.</p> <p>3 Q. But we can agree that Acis had</p> <p>4 responsibility for managing at least a</p> <p>5 portion of HCLOF, correct?</p> <p>6 A. Highland --</p> <p>7 MR. WILSON: Objection to form.</p> <p>8 MR. MALONEY: Objection to form</p> <p>9 as well, foundation, and legal</p> <p>10 conclusion.</p> <p>11 (Reporter clarification.)</p> <p>12 A. It's my understanding it's</p> <p>13 Highlands' subsidiaries, yes.</p> <p>14 Q. Okay. Well, I'm going to go</p> <p>15 down to Paragraph 4, at the top of your</p> <p>16 screen here where it says, "Recently</p> <p>17 William Scott, the director of HCLOF,</p> <p>18 testified that he wants to reset the Acis</p> <p>19 CLOs to bring them in line with current</p> <p>20 market interest rates, that the inability</p> <p>21 to do the reset is causing damages to</p> <p>22 HCLOF in the amount of approximately</p> <p>23 \$295,000 per week."</p> <p>24 Is that an accurate statement?</p> <p>25 MS. WEISGERBER: Objection to</p>



<p style="text-align: right;">Page 94</p> <p>1 Confidential - Pugatch</p> <p>2 form and foundation.</p> <p>3 MR. MALONEY: Mark Maloney.</p> <p>4 Object to form and foundation.</p> <p>5 A. I don't know. You'd have to ask</p> <p>6 William Scott.</p> <p>7 Q. Well, were you aware, I mean,</p> <p>8 there's a citation to a, well, I don't</p> <p>9 know if there's a citation on this one.</p> <p>10 But it says that he recently testified.</p> <p>11 Were you aware that he testified that he</p> <p>12 wanted to reset the Acis CLOs?</p> <p>13 MS. WEISGERBER: Same objection.</p> <p>14 We're really getting far afield.</p> <p>15 MR. WILSON: I'm just asking if</p> <p>16 he was aware that this statement</p> <p>17 occurred.</p> <p>18 A. At some point in time, yes, I</p> <p>19 became aware of that.</p> <p>20 Q. Okay. Do you agree that the</p> <p>21 inability to do a reset was causing</p> <p>22 damages in the amount of \$295,000 per</p> <p>23 week?</p> <p>24 MS. WEISGERBER: Objection to</p> <p>25 form and foundation. This is not a</p>	<p style="text-align: right;">Page 95</p> <p>1 Confidential - Pugatch</p> <p>2 HarbourVest-prepared document.</p> <p>3 MR. WILSON: Well, I understand</p> <p>4 that. I'm just asking if he agrees</p> <p>5 with it.</p> <p>6 A. I don't have enough information</p> <p>7 to assess that, specifically the \$295,000</p> <p>8 per week number.</p> <p>9 Q. I want to go down to Paragraph 7</p> <p>10 of this document, and this is going to be</p> <p>11 at the top of Page 5. It says</p> <p>12 "Mr. Ellington also testified that because</p> <p>13 it would be putting in additional capital</p> <p>14 in connection with any reset CLOs, the</p> <p>15 Investor," and we discussed that that's</p> <p>16 HarbourVest, "had the ability to start</p> <p>17 'calling the shots' and dictate the terms</p> <p>18 of any reset transactions."</p> <p>19 Do you agree with that?</p> <p>20 A. No.</p> <p>21 MS. WEISGERBER: Objection to</p> <p>22 form.</p> <p>23 Q. I want to go down to Paragraph</p> <p>24 9.</p> <p>25 It says, "The Trustee also needs</p>
<p style="text-align: right;">Page 96</p> <p>1 Confidential - Pugatch</p> <p>2 information regarding whether the Investor</p> <p>3 presently has any concerns about pursuing</p> <p>4 reset transactions with the Reorganized</p> <p>5 Acis and Brigade, under the plan now that</p> <p>6 Acis has been able to successfully serve</p> <p>7 as the portfolio manager for the Acis CLOs</p> <p>8 on a post-petition basis, and there are no</p> <p>9 impediments to the ability of the</p> <p>10 Reorganized Acis and Brigade to pursue a</p> <p>11 reset on the Acis CLOs."</p> <p>12 Do you know whether the Investor</p> <p>13 had any concerns about pursuing a reset?</p> <p>14 MS. WEISGERBER: Objection to</p> <p>15 form, foundation.</p> <p>16 A. The context of a reset or</p> <p>17 refinancing of the various CLOs in HCLOF</p> <p>18 was part of the original investment</p> <p>19 thesis. So there would not have been</p> <p>20 concerns about the ability to do so. Our</p> <p>21 concerns were more in the inability to do</p> <p>22 so, as a result of the Acis bankruptcy.</p> <p>23 Q. But here, you've got the Trustee</p> <p>24 representing in Paragraph 5, that</p> <p>25 according to the Trustee's Second Amended</p>	<p style="text-align: right;">Page 97</p> <p>1 Confidential - Pugatch</p> <p>2 Joint Plan, it provides for such a reset</p> <p>3 to be performed by the Reorganized Acis</p> <p>4 and supervised by Brigade Capital</p> <p>5 Management.</p> <p>6 And it appears to me that the</p> <p>7 Trustee is trying to get the Investor's</p> <p>8 position on whether a reset should be</p> <p>9 pursued. And I'm just asking you whether</p> <p>10 HarbourVest objected to a reset at this</p> <p>11 time?</p> <p>12 MS. WEISGERBER: I'm going to</p> <p>13 object to all of the colloquy before.</p> <p>14 I'm going to object to any extent</p> <p>15 Mike's being asked about what the</p> <p>16 Trustee wanted or viewed. If you want</p> <p>17 to ask your question in isolation, go</p> <p>18 ahead.</p> <p>19 Q. What was HarbourVest's position</p> <p>20 regarding a reset, as of the date that</p> <p>21 this was filed, and I'll look again,</p> <p>22 October 10, 2018?</p> <p>23 MS. WEISGERBER: Objection to</p> <p>24 form. Objection to the extent it's</p> <p>25 asking HarbourVest's position. And I</p>

<p style="text-align: right;">Page 98</p> <p>1 Confidential - Pugatch</p> <p>2 cannot conceive how this is relevant</p> <p>3 to the 9019 motion before the court</p> <p>4 right now.</p> <p>5 Nonetheless, Mike, if you have</p> <p>6 an answer, on behalf of yourself, you</p> <p>7 can answer.</p> <p>8 A. HarbourVest was a passive</p> <p>9 minority investor in HCLOF. It had no</p> <p>10 ability to control the underlying</p> <p>11 portfolio management or ability to reset,</p> <p>12 refinance, or call in any of the equity of</p> <p>13 the underlying CLOs. That was all under</p> <p>14 the purview of Highland.</p> <p>15 Q. Did you understand that</p> <p>16 Mr. Ellington had given sworn testimony</p> <p>17 that the Investor is the party calling the</p> <p>18 shots for HCLOF, with respect to any reset</p> <p>19 transactions?</p> <p>20 MS. WEISGERBER: Objection to</p> <p>21 form.</p> <p>22 A. I did become aware of it, yes.</p> <p>23 Q. When did you become aware of</p> <p>24 that?</p> <p>25 A. At some point subsequent to that</p>	<p style="text-align: right;">Page 99</p> <p>1 Confidential - Pugatch</p> <p>2 testimony being given.</p> <p>3 Q. But was it when you read this</p> <p>4 motion that we're looking at as</p> <p>5 Exhibit 10?</p> <p>6 MS. WEISGERBER: Objection to</p> <p>7 form.</p> <p>8 A. It may have been. I don't</p> <p>9 recall the exact time or medium that I</p> <p>10 became aware of that.</p> <p>11 Q. Was a deposition given as a</p> <p>12 result of this motion?</p> <p>13 MS. WEISGERBER: Objection to</p> <p>14 form. If you have the whole document,</p> <p>15 Mike, that may make sense.</p> <p>16 MR. WILSON: Well, this motion</p> <p>17 at the top says it's a Motion for 2004</p> <p>18 Examination of Investor. And then</p> <p>19 attached to this motion are some</p> <p>20 document requests, and then deposition</p> <p>21 topics for a corporate representative</p> <p>22 of the Investor, and then a proposed</p> <p>23 order.</p> <p>24 BY MR. WILSON:</p> <p>25 Q. Do you recall whether a</p>
<p style="text-align: right;">Page 100</p> <p>1 Confidential - Pugatch</p> <p>2 deposition was given, after this motion</p> <p>3 was filed?</p> <p>4 A. Yes.</p> <p>5 Q. And who was the designated</p> <p>6 deponent?</p> <p>7 A. I was.</p> <p>8 Q. And were documents produced, as</p> <p>9 a result of this?</p> <p>10 A. Yes, there were.</p> <p>11 Q. And were you asked at that</p> <p>12 deposition what the Investor's position on</p> <p>13 a reset was?</p> <p>14 MS. WEISGERBER: Objection to</p> <p>15 form.</p> <p>16 If you recall.</p> <p>17 A. I don't recall specifically that</p> <p>18 question being asked.</p> <p>19 Q. Well, do you know what</p> <p>20 the Debtor's position -- I'm sorry, the</p> <p>21 Debtor's -- the Investor's position on a</p> <p>22 reset was as of that day?</p> <p>23 MS. WEISGERBER: Objection to</p> <p>24 form. Asked and answered.</p> <p>25 A. I would just say again, in</p>	<p style="text-align: right;">Page 101</p> <p>1 Confidential - Pugatch</p> <p>2 general, the original investment thesis</p> <p>3 here was predicated on a refinancing reset</p> <p>4 of the various CLOs, and we were not in</p> <p>5 control as a passive minority investor</p> <p>6 here to --</p> <p>7 Q. Well, you said you weren't in</p> <p>8 control, but what would HarbourVest's</p> <p>9 preference have been?</p> <p>10 MS. WEISGERBER: Objection to</p> <p>11 form.</p> <p>12 A. I do not recall.</p> <p>13 MS. WEISGERBER: If you recall.</p> <p>14 A. I don't recall the specifics</p> <p>15 around what Acis CLO were referring to</p> <p>16 here or what the specific implications of</p> <p>17 a reset were at that time; but regardless,</p> <p>18 that was a decision for the investment</p> <p>19 manager of HCLO.</p> <p>20 Q. But was it your opinion, your</p> <p>21 personal opinion, that a reset was</p> <p>22 appropriate?</p> <p>23 MS. WEISGERBER: Objection to</p> <p>24 form.</p> <p>25 A. Again, we were not the portfolio</p>

<p style="text-align: right;">Page 102</p> <p>1 Confidential - Pugatch</p> <p>2 manager of HCLOF. We were not in control</p> <p>3 of those decisions or making</p> <p>4 recommendations on those decisions. That</p> <p>5 was the delegated authority of Highland,</p> <p>6 as the investment manager.</p> <p>7 Q. I'm not asking for that. I'm</p> <p>8 asking for your personal feelings toward a</p> <p>9 reset.</p> <p>10 MS. WEISGERBER: Same objection.</p> <p>11 He's only answering on behalf of</p> <p>12 himself, and it's been asked and</p> <p>13 answered three times since.</p> <p>14 MR. WILSON: Well, he hasn't</p> <p>15 answered the question. He's just told</p> <p>16 me they don't have the authority to do</p> <p>17 the reset.</p> <p>18 MS. WEISGERBER: And he told you</p> <p>19 the other information he'd be required</p> <p>20 to even have an opinion on it. So</p> <p>21 same objection stands. It's not a</p> <p>22 specific enough question for him.</p> <p>23 Mike, you're welcome, if you</p> <p>24 have, if you have an answer, you're</p> <p>25 welcome to give it.</p>	<p style="text-align: right;">Page 103</p> <p>1 Confidential - Pugatch</p> <p>2 A. Yeah, the investment guidelines</p> <p>3 of HCLOF, from the documents that we</p> <p>4 signed at the time we entered into the</p> <p>5 transaction, laid out the specific, again,</p> <p>6 investment guidelines that HCLOF would be</p> <p>7 guided under, including the opportunity to</p> <p>8 refinance or reset various CLOs over time,</p> <p>9 in accordance with Highland's, you know,</p> <p>10 expectations and ultimate decision to do</p> <p>11 so.</p> <p>12 Q. But did you believe, at this</p> <p>13 time, that a reset was appropriate?</p> <p>14 MS. WEISGERBER: Objection to</p> <p>15 form. This is asked and answered</p> <p>16 several times now, I think we should</p> <p>17 move on. He's given you an answer.</p> <p>18 MR. WILSON: Well, I want to</p> <p>19 know what his personal opinion was</p> <p>20 about whether the reset was</p> <p>21 appropriate.</p> <p>22 A. What reset are you referring to?</p> <p>23 Q. A reset as of October 10, 2018.</p> <p>24 At that time, did you believe that a reset</p> <p>25 was appropriate?</p>
<p style="text-align: right;">Page 104</p> <p>1 Confidential - Pugatch</p> <p>2 A. A reset of what?</p> <p>3 MS. WEISGERBER: Same objection.</p> <p>4 Q. A reset as been discussed all</p> <p>5 through this motion, the same reset we're</p> <p>6 talking about.</p> <p>7 MS. WEISGERBER: Objection.</p> <p>8 Same objections. I just don't see how</p> <p>9 he could possibly answer this vague</p> <p>10 question.</p> <p>11 Q. Okay. So William Scott,</p> <p>12 director of HCLOF, testified that he</p> <p>13 wanted to reset the Acis CLOs because if</p> <p>14 they don't, they are losing \$295,000 a</p> <p>15 week.</p> <p>16 Did you think that a reset was</p> <p>17 appropriate in line with what Mr. Scott</p> <p>18 believed?</p> <p>19 MR. MALONEY: Objection to form,</p> <p>20 foundation.</p> <p>21 MS. WEISGERBER: Same</p> <p>22 objections. And asked and answered</p> <p>23 numerous times.</p> <p>24 A. We were not managing the</p> <p>25 portfolio. We were an investor in a</p>	<p style="text-align: right;">Page 105</p> <p>1 Confidential - Pugatch</p> <p>2 company, an investment company that was</p> <p>3 managing this. We were not, I was not</p> <p>4 proximate enough to any of the underlying</p> <p>5 happenings of the look through CLO</p> <p>6 positions of HCLOF to have an informed</p> <p>7 view on this, at this time.</p> <p>8 Q. Is your testimony that you did</p> <p>9 not have an opinion as to whether the Acis</p> <p>10 CLO should be reset in late 2018?</p> <p>11 MS. WEISGERBER: Objection to</p> <p>12 form. Misstates testimony.</p> <p>13 A. My view is that the original</p> <p>14 investment guidelines here called for a</p> <p>15 reset or refinance of the CLOs and that</p> <p>16 Highland was subsequently in full control</p> <p>17 of whether or not to pursue this, and we,</p> <p>18 HarbourVest, as an investor had no ability</p> <p>19 to object or to force that on a go-forward</p> <p>20 basis.</p> <p>21 MR. WILSON: Objection.</p> <p>22 Nonresponsive.</p> <p>23 Q. I want to know your personal</p> <p>24 opinion of whether you thought a reset was</p> <p>25 appropriate in October of 2018.</p>



<p style="text-align: right;">Page 106</p> <p>1 Confidential - Pugatch</p> <p>2 MR. MORRIS: Objection to the</p> <p>3 form of the question. That's been</p> <p>4 asked and answered.</p> <p>5 MR. WILSON: He has yet to give</p> <p>6 his answer to –</p> <p>7 MR. MORRIS: He just told you he</p> <p>8 didn't have enough information. He</p> <p>9 just told you that, crystal clear.</p> <p>10 MR. WILSON: Well, I'm not going</p> <p>11 to argue with you, John, but I just</p> <p>12 want an answer to my question.</p> <p>13 His answer, he wouldn't agree</p> <p>14 with my, with my summation that he had</p> <p>15 no opinion, so I just want to know</p> <p>16 what his opinion is.</p> <p>17 MS. WEISGERBER: Same</p> <p>18 objections.</p> <p>19 You're not giving him enough</p> <p>20 information to answer the question,</p> <p>21 and at this point, it would be</p> <p>22 speculation. We can just keep going</p> <p>23 in circles on this, but your –</p> <p>24 MR. WILSON: His opinion would</p> <p>25 be speculation?</p>	<p style="text-align: right;">Page 107</p> <p>1 Confidential - Pugatch</p> <p>2 MS. WEISGERBER: He said that,</p> <p>3 he actually testified at some point</p> <p>4 that he doesn't recall specifics of</p> <p>5 the time, so that was another piece of</p> <p>6 the puzzle.</p> <p>7 I mean, I don't want to be</p> <p>8 coaching the witness or giving</p> <p>9 testimony here, but I think you're not</p> <p>10 listening to the things he's saying,</p> <p>11 John, just because you don't like it.</p> <p>12 BY MR. WILSON:</p> <p>13 Q. Mr. Pugatch, did you have an</p> <p>14 opinion, in October of 2019, about whether</p> <p>15 the Acis CLOs should be reset?</p> <p>16 MS. WEISGERBER: Objection to</p> <p>17 form.</p> <p>18 A. I don't recall any definitive</p> <p>19 opinion I would have had, but as stated,</p> <p>20 was not proximate enough to have an</p> <p>21 informed opinion, in any event.</p> <p>22 Q. And to your knowledge, have the</p> <p>23 Acis CLOs ever been reset?</p> <p>24 MS. WEISGERBER: Objection to</p> <p>25 form, foundation.</p>
<p style="text-align: right;">Page 108</p> <p>1 Confidential - Pugatch</p> <p>2 A. I do not believe that any of the</p> <p>3 Acis CLOs were ever reset.</p> <p>4 Q. All right. So who negotiated</p> <p>5 this claim, the settlement of this claim</p> <p>6 on behalf of HarbourVest?</p> <p>7 A. I did.</p> <p>8 Q. And who negotiated for the</p> <p>9 Debtor?</p> <p>10 A. Jim Seery.</p> <p>11 Q. And when did those negotiations</p> <p>12 begin?</p> <p>13 A. It started sometime in November,</p> <p>14 I believe.</p> <p>15 Q. And are you aware that Jim Seery</p> <p>16 has ever taken the position that the</p> <p>17 HarbourVest claim was worthless?</p> <p>18 MS. WEISGERBER: Objection to</p> <p>19 form, foundation.</p> <p>20 A. No, I'm not aware of that.</p> <p>21 Q. Has Jim Seery ever offered</p> <p>22 \$5 million to settle the HarbourVest</p> <p>23 claim?</p> <p>24 A. Not to my knowledge.</p> <p>25 MS. WEISGERBER: Objection to</p>	<p style="text-align: right;">Page 109</p> <p>1 Confidential - Pugatch</p> <p>2 form.</p> <p>3 MR. WILSON: I'm going to send</p> <p>4 out Exhibit 11.</p> <p>5 (Whereupon, Exhibit 11,</p> <p>6 Declaration of John A. Morris in</p> <p>7 Support of the Debtor's Motion For</p> <p>8 Entry of an Order Approving Settlement</p> <p>9 With Harbourvest (Claim Nos. 143, 147,</p> <p>10 149, 150, 153, 154) and Authorizing</p> <p>11 Actions, 82 pages, was marked for</p> <p>12 identification.)</p> <p>13 BY MR. WILSON:</p> <p>14 Q. I want pull this up on the</p> <p>15 screen share. This Exhibit 11 is the</p> <p>16 Declaration of John Morris in Support of</p> <p>17 the Debtor's 9019 Motion, bears</p> <p>18 Document 1631. And attached to this</p> <p>19 exhibit is a trim cut copy of the</p> <p>20 Settlement Agreement executed December 23,</p> <p>21 2020.</p> <p>22 And the Settlement Agreement has</p> <p>23 Paragraph 1, Settlement of Claims, that</p> <p>24 HarbourVest is going to receive a</p> <p>25 \$45 million unsecured, general unsecured</p>

<p style="text-align: right;">Page 110</p> <p>1 Confidential - Pugatch</p> <p>2 claim, and a \$35 million subordinated</p> <p>3 claim.</p> <p>4 And then Part B of that</p> <p>5 paragraph states that HarbourVest is going</p> <p>6 to transfer all its rights, titles, and</p> <p>7 interests to its investment in CLOF to the</p> <p>8 Debtor or its nominee.</p> <p>9 Is that your understanding of</p> <p>10 the general terms of this settlement?</p> <p>11 MS. WEISGERBER: Objection to</p> <p>12 form.</p> <p>13 A. Yes, it is.</p> <p>14 Q. Okay. And also in Paragraph 5,</p> <p>15 Each HarbourVest party agrees that it will</p> <p>16 vote all of HarbourVest claims held by</p> <p>17 such HarbourVest party to accept the plan.</p> <p>18 And I won't read all of that.</p> <p>19 But the gist of this paragraph is that</p> <p>20 HarbourVest is going to vote for the</p> <p>21 Debtor's proposed plan; is that correct?</p> <p>22 MS. WEISGERBER: Objection to</p> <p>23 form.</p> <p>24 A. Yes, correct.</p> <p>25 Q. And how did that term come to be</p>	<p style="text-align: right;">Page 111</p> <p>1 Confidential - Pugatch</p> <p>2 in this Settlement Agreement?</p> <p>3 MS. WEISGERBER: Objection to</p> <p>4 form.</p> <p>5 A. I believe it was put there as</p> <p>6 part of the drafting of the ultimate</p> <p>7 agreement to the fund.</p> <p>8 Q. Well, whose suggestion was it</p> <p>9 that it be added to the drafting?</p> <p>10 MS. WEISGERBER: Objection to</p> <p>11 form.</p> <p>12 A. I believe that it came from</p> <p>13 Debtor's counsel, as they took the lead on</p> <p>14 drafting the documentation here.</p> <p>15 Q. Did Jim Seery ever tell you that</p> <p>16 it was important to him that HarbourVest</p> <p>17 vote in support of the plan?</p> <p>18 MS. WEISGERBER: Objection to</p> <p>19 form.</p> <p>20 A. I don't recall that ever being</p> <p>21 discussed. Certainly it was not the</p> <p>22 prominent feature of any of the</p> <p>23 discussions or negotiations that I ever</p> <p>24 had with Jim.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 112</p> <p>1 Confidential - Pugatch</p> <p>2 MR. WILSON: I'm going to take a</p> <p>3 ten-minute break, and I think I'm</p> <p>4 almost ready to wrap up. So I want to</p> <p>5 stop my screen share. And let's,</p> <p>6 well, let's start back at 2:30, and I</p> <p>7 think I'll be quick. Thank you.</p> <p>8 (Recess taken.)</p> <p>9 BY MR. WILSON:</p> <p>10 Q. Mr. Pugatch, earlier you</p> <p>11 testified that consistent with your</p> <p>12 declaration you filed that as of August</p> <p>13 31, 2020, the value of HCLOF was</p> <p>14 \$44.5 million. And then if we look at --</p> <p>15 I don't remember which --</p> <p>16 Okay. So this would have been</p> <p>17 Exhibit 7. I'll do a share screen.</p> <p>18 As of November 15, 2017 these</p> <p>19 shares were purchased at \$1.02 and change</p> <p>20 apiece, and there were a total number of</p> <p>21 143 million shares.</p> <p>22 Was the value of this investment</p> <p>23 roughly \$150 million, as of November 15,</p> <p>24 2017?</p> <p>25 MS. WEISGERBER: Objection to</p>	<p style="text-align: right;">Page 113</p> <p>1 Confidential - Pugatch</p> <p>2 form. Foundation.</p> <p>3 MR. MALONEY: Join.</p> <p>4 MS. WEISGERBER: I don't know,</p> <p>5 Mike, if you're comfortable doing that</p> <p>6 math or what.</p> <p>7 A. Yes, approximately that's</p> <p>8 correct.</p> <p>9 Q. Okay. And you know, and I've</p> <p>10 read your papers and you talk about</p> <p>11 attorneys' fees that you say weren't</p> <p>12 appropriate to be charged to HCLOF and</p> <p>13 that part of it, but as to the loss of</p> <p>14 value of the actual investment, what's</p> <p>15 your understanding of what led to that?</p> <p>16 MS. WEISGERBER: Objection to</p> <p>17 form. Objection to the extent it</p> <p>18 calls for a legal conclusion.</p> <p>19 Mike, to the extent you have a</p> <p>20 nonlegal opinion on that, that's not</p> <p>21 based on conversations with counsel,</p> <p>22 you can answer.</p> <p>23 A. Yeah, I think a lot of the value</p> <p>24 erosion was due to the inability to</p> <p>25 refinance, reset a number of the</p>

<p style="text-align: right;">Page 114</p> <p>1 Confidential - Pugatch</p> <p>2 underlying CLOs that was part of the</p> <p>3 original investment thesis here, largely</p> <p>4 as a result of the ongoing litigation,</p> <p>5 that Highland was involved in, and the</p> <p>6 subsequent Acis bankruptcy.</p> <p>7 Q. And so during the period of time</p> <p>8 when the injunction prohibited certain</p> <p>9 actions with respect to this investment,</p> <p>10 is it your opinion that this investment</p> <p>11 was losing value?</p> <p>12 MR. MALONEY: Objection.</p> <p>13 MS. WEISGERBER: Objection to</p> <p>14 form.</p> <p>15 A. Can you repeat the question,</p> <p>16 John?</p> <p>17 Q. Well, I guess I want to know,</p> <p>18 like, in a, on a timeline kind of basis,</p> <p>19 do you think that the significant</p> <p>20 reduction of value occurred prior to or</p> <p>21 after the confirmation of the Acis plan on</p> <p>22 February 1, 2019?</p> <p>23 MS. WEISGERBER: Objection to</p> <p>24 form. Objection to the extent it</p> <p>25 calls for a legal conclusion.</p>	<p style="text-align: right;">Page 115</p> <p>1 Confidential - Pugatch</p> <p>2 You can give your lay opinion,</p> <p>3 if you have one, Mike.</p> <p>4 A. I think it's all been as a</p> <p>5 result of the events leading up to the</p> <p>6 Acis bankruptcy, including the inability</p> <p>7 to refinance or reset the CLOs which would</p> <p>8 have been to the benefit of the CLO equity</p> <p>9 holders including HCLOF.</p> <p>10 Q. And so what, what was the cause</p> <p>11 of the inability to reset?</p> <p>12 MS. WEISGERBER: Same</p> <p>13 objections: form, foundation, legal</p> <p>14 conclusion.</p> <p>15 If you have a non-privileged</p> <p>16 answer, Mike, go ahead.</p> <p>17 A. Yeah, my understanding was</p> <p>18 originally the TRO, preventing Highland</p> <p>19 and HCLOF from pursuing that, and then</p> <p>20 subsequent to the Acis bankruptcy ruling,</p> <p>21 a similar injunction that remained around</p> <p>22 the inability for the equity holders of</p> <p>23 those CLOs to redeem or refinances or</p> <p>24 reset.</p> <p>25 Q. So do you -- is there any</p>
<p style="text-align: right;">Page 116</p> <p>1 Confidential - Pugatch</p> <p>2 component, in your opinion, of the loss of</p> <p>3 value of these investments due to</p> <p>4 portfolio mismanagement?</p> <p>5 MS. WEISGERBER: Objection to</p> <p>6 form, foundation, legal conclusion, or</p> <p>7 expert opinion, calling for</p> <p>8 speculation.</p> <p>9 If you have a view, Mike.</p> <p>10 A. Yeah. Can you be more specific</p> <p>11 with the question, John?</p> <p>12 Q. Well, I'll ask it a different</p> <p>13 way.</p> <p>14 Do you think that portfolio</p> <p>15 mismanagement was a portion of the cause</p> <p>16 of the reduction in value?</p> <p>17 MS. WEISGERBER: Same objection.</p> <p>18 A. I can't speculate as to, you</p> <p>19 know, the underlying management decisions</p> <p>20 around the CLOs, but what I do know is</p> <p>21 that the mismanagement and</p> <p>22 misrepresentations at the HCLOF level,</p> <p>23 that would ultimately result in the Acis</p> <p>24 bankruptcy and subsequent to that, the TRO</p> <p>25 and the inability to refinance or reset</p>	<p style="text-align: right;">Page 117</p> <p>1 Confidential - Pugatch</p> <p>2 that has been the, far and away, the</p> <p>3 largest contributor to loss of value</p> <p>4 within the portfolio.</p> <p>5 Q. One of the allegations that</p> <p>6 HarbourVest has made is that Highland</p> <p>7 improperly changed the portfolio manager.</p> <p>8 Is it your opinion that if that had not</p> <p>9 been done, the portfolio manager had not</p> <p>10 been changed at the inception of</p> <p>11 HarbourVest's investment, that that would</p> <p>12 have preserved any value of this fund?</p> <p>13 MR. MORRIS: Objection to the</p> <p>14 form of the question.</p> <p>15 MS. WEISGERBER: Same objection.</p> <p>16 Calling for speculation, hypothetical</p> <p>17 lay opinion.</p> <p>18 If you have testimony, go ahead,</p> <p>19 Mike.</p> <p>20 A. Sorry, could you just repeat the</p> <p>21 question, John? I want to make sure I'm</p> <p>22 answering it correctly.</p> <p>23 Q. I guess I just want to know, and</p> <p>24 I think you kind of hinted at this a</p> <p>25 little bit earlier today, but I guess what</p>

<p style="text-align: right;">Page 118</p> <p>1 Confidential - Pugatch</p> <p>2 I really want to know is do you think that</p> <p>3 the particular portfolio manager made a</p> <p>4 difference in the loss of value that HCLOF</p> <p>5 suffered?</p> <p>6 MS. WEISGERBER: Same</p> <p>7 objections.</p> <p>8 A. Again, it sounds like you're</p> <p>9 asking a different question there than</p> <p>10 what I thought I understood your question</p> <p>11 to be initially. What I would say to that</p> <p>12 is the decision originally to change the</p> <p>13 portfolio manager, and ultimately the</p> <p>14 events that took place following the</p> <p>15 Arbitration Award for Mr. Terry, resulted</p> <p>16 in the subsequent Acis bankruptcy, which</p> <p>17 in turn has led to the destruction of</p> <p>18 value, because of the inability to</p> <p>19 refinance or reset, the underlying CLOs.</p> <p>20 Q. So HarbourVest is not alleging</p> <p>21 that the portfolio manager made any</p> <p>22 particular decisions or participated in</p> <p>23 any mismanagement that led to reduction in</p> <p>24 value?</p> <p>25 MS. WEISGERBER: Objection to</p>	<p style="text-align: right;">Page 119</p> <p>1 Confidential - Pugatch</p> <p>2 form.</p> <p>3 A. When you're asking about</p> <p>4 portfolio manager, are we referring to the</p> <p>5 portfolio manager at the underlying CLO</p> <p>6 level or at the HCLOF level? I think</p> <p>7 there are two different levels here of</p> <p>8 portfolio management.</p> <p>9 Q. Well, I'm talking about the</p> <p>10 portfolio manager, and you can tell me</p> <p>11 which one it is, but which portfolio</p> <p>12 manager has the ability to, to impact the</p> <p>13 performance of these funds?</p> <p>14 MR. MORRIS: Objection.</p> <p>15 A. If you're referring to HCLOF,</p> <p>16 the --</p> <p>17 MS. WEISGERBER: Objection to</p> <p>18 form.</p> <p>19 A. -- investment manager, or the</p> <p>20 portfolio manager of HCLOF has the ability</p> <p>21 to drive value creation by virtue of its</p> <p>22 equity position in the underlying CLOs.</p> <p>23 Q. Well, which portfolio manager</p> <p>24 makes the day-to-day decisions about</p> <p>25 selling assets, trading assets, that, that</p>
<p style="text-align: right;">Page 120</p> <p>1 Confidential - Pugatch</p> <p>2 I guess --</p> <p>3 A. If you're referring to</p> <p>4 underlaying credits, that would be the</p> <p>5 portfolio manager in each of the</p> <p>6 individual CLOs. The impact in value to</p> <p>7 the equity investment in the CLOs is a</p> <p>8 decision at the HCLOF level, where the</p> <p>9 majority of that value erosion has</p> <p>10 resulted from the inability to refinance</p> <p>11 or reset those CLO entities.</p> <p>12 Q. And that's what we're talking</p> <p>13 about when you said that they, that</p> <p>14 Highland changed the portfolio manager,</p> <p>15 you're talking about at the HCLOF level,</p> <p>16 right?</p> <p>17 MS. WEISGERBER: Objection to</p> <p>18 form.</p> <p>19 A. Well, I was responding to the</p> <p>20 question that I thought you asked. I</p> <p>21 wasn't necessarily stating that.</p> <p>22 Q. I guess all I'm really trying to</p> <p>23 do here is just understand HarbourVest's</p> <p>24 position. And it sounds to me, and</p> <p>25 correct me if I'm wrong, it sounds to me</p>	<p style="text-align: right;">Page 121</p> <p>1 Confidential - Pugatch</p> <p>2 that what you're saying is that the</p> <p>3 diminution of value wasn't attributable to</p> <p>4 poor investment decisions by a portfolio</p> <p>5 manager, as much as it was the</p> <p>6 consequences in the Acis bankruptcy of the</p> <p>7 change in portfolio manager; is that fair?</p> <p>8 MS. WEISGERBER: Objection to</p> <p>9 form. Misstates testimony.</p> <p>10 A. Yes, it is. That is my general</p> <p>11 understanding, yes.</p> <p>12 MR. WILSON: Okay. No further</p> <p>13 questions.</p> <p>14 MR. MORRIS: All right. Well,</p> <p>15 thank you very much.</p> <p>16 THE REPORTER: Does anybody have</p> <p>17 any other questions?</p> <p>18 MR. KANE: Yes. This is John</p> <p>19 Kane with CLO Holdco. I'll jump on</p> <p>20 video. I've got some questions, but</p> <p>21 I'm going to be relatively short. If</p> <p>22 anybody else has a little bit heavier</p> <p>23 schedule, let me know.</p> <p>24 All right. I'll take that as a</p> <p>25 go-ahead.</p>

<p style="text-align: right;">Page 122</p> <p>1 Confidential - Pugatch</p> <p>2 EXAMINATION</p> <p>3 BY MR. KANE:</p> <p>4 Q. This is John Kane. I represent</p> <p>5 CLO Holdco.</p> <p>6 Hi, Mike Pugatch. It's nice to</p> <p>7 talk to you.</p> <p>8 A. Likewise.</p> <p>9 Q. I just wanted to briefly</p> <p>10 confirm. I believe you testified you</p> <p>11 participated in negotiations that lead to</p> <p>12 the Settlement Agreement, that is part of</p> <p>13 the 9019 motion, before the bankruptcy</p> <p>14 court; is that correct?</p> <p>15 A. Correct.</p> <p>16 Q. And did you actively negotiate</p> <p>17 the terms of that Settlement Agreement?</p> <p>18 A. Yes.</p> <p>19 Q. As in dollar amounts, what the</p> <p>20 consideration exchanged, how it would</p> <p>21 work, that kind of stuff, obviously with</p> <p>22 the assistance of counsel?</p> <p>23 A. Yes. All of that. The</p> <p>24 negotiations were, you know, over the</p> <p>25 course of a number of weeks and a number</p>	<p style="text-align: right;">Page 123</p> <p>1 Confidential - Pugatch</p> <p>2 of conversations directly with the Debtor,</p> <p>3 with counsel, all-hands calls, et cetera.</p> <p>4 Q. Okay. And as part of that in</p> <p>5 the Settlement Agreement, you say the</p> <p>6 HarbourVest entities were members in HCLOF</p> <p>7 are in essence selling their shares to the</p> <p>8 Debtor, and also in exchange getting some</p> <p>9 claims back in the Debtor's plan. Is that</p> <p>10 a fair summary?</p> <p>11 MS. WEISGERBER: Objection to</p> <p>12 form. Compound question.</p> <p>13 Q. Let me ask it a different way.</p> <p>14 A. Can you re-ask that, please?</p> <p>15 Q. Yeah. I'm happy to do that.</p> <p>16 Why don't you describe for me</p> <p>17 how you would summarize that settlement?</p> <p>18 A. Largely, as I think you just</p> <p>19 described it, which was in exchange for,</p> <p>20 in exchange for the, both the unsecured</p> <p>21 creditors' claim, and subordinated</p> <p>22 creditors' claim, that settlement value is</p> <p>23 in exchange for us transferring the</p> <p>24 interest in HCLOF to the Debtor, as part</p> <p>25 of that overall negotiating package.</p>
<p style="text-align: right;">Page 124</p> <p>1 Confidential - Pugatch</p> <p>2 Q. And what would you estimate, I</p> <p>3 going to have to imagine, let me rephrase</p> <p>4 the question.</p> <p>5 Have you guys done kind of an</p> <p>6 internal best guess of what your unsecured</p> <p>7 and subordinated claims would be, under</p> <p>8 the plan, the value?</p> <p>9 MS. WEISGERBER: Objection.</p> <p>10 Objection to form.</p> <p>11 A. Just to be clear, John, are you</p> <p>12 referring to the expected recovery value</p> <p>13 of our claims?</p> <p>14 Q. Yes, sir.</p> <p>15 MS. WEISGERBER: Objection to</p> <p>16 form. Can we just clarify, so you're</p> <p>17 talking about what they'll recover</p> <p>18 ultimately? Is that the question,</p> <p>19 John? I'm confused myself. I just</p> <p>20 want to be sure I am following.</p> <p>21 MR. KANE: Yeah. So I'm asking</p> <p>22 Mike how much he believes, based on</p> <p>23 his analysis, that HarbourVest is</p> <p>24 likely to recover from the \$45 million</p> <p>25 allowed general unsecured claim and</p>	<p style="text-align: right;">Page 125</p> <p>1 Confidential - Pugatch</p> <p>2 \$35 million allowed subordinated</p> <p>3 claim, if the settlement is approved</p> <p>4 and the plan is confirmed.</p> <p>5 MS. WEISGERBER: Objection to</p> <p>6 form.</p> <p>7 But you can answer, if you have</p> <p>8 an answer, Mike.</p> <p>9 A. We do have a sense. It's really</p> <p>10 a range of projected outcomes, as you can</p> <p>11 imagine, based on the recoveries, largely</p> <p>12 informed by conversations with the Debtor.</p> <p>13 Q. And what is that range of value?</p> <p>14 MS. WEISGERBER: Objection to</p> <p>15 form.</p> <p>16 A. Our understanding, again, based</p> <p>17 on those conversations, is that the</p> <p>18 general unsecured claim could be valued in</p> <p>19 a 75 to 80 cents on the dollar recovery.</p> <p>20 And then a, you know, that the junior</p> <p>21 class claim is really sort of upside</p> <p>22 potential, to the extent there is more</p> <p>23 recovery or more asset value of the</p> <p>24 estate, for the benefit of creditors over</p> <p>25 time.</p>



<p style="text-align: right;">Page 126</p> <p>1 Confidential - Pugatch</p> <p>2 Q. What is your understanding of</p> <p>3 the current value of the HarbourVest</p> <p>4 shares in HCLOF that would be transferred</p> <p>5 under this Agreement?</p> <p>6 A. It's roughly \$22.5 million of</p> <p>7 their value.</p> <p>8 Q. So doing a little bit of, you</p> <p>9 know, back-of-the-table-cloth math, how do</p> <p>10 you allocate value between the releases</p> <p>11 that you are receiving and the shares that</p> <p>12 you are transferring?</p> <p>13 MR. KANE: I'm sorry. Let me</p> <p>14 rephrase that. Let me ask that</p> <p>15 question differently.</p> <p>16 Q. In addition to the claims under</p> <p>17 the plan, HarbourVest is providing the</p> <p>18 Debt – sorry, in addition to the shares</p> <p>19 that are being transferred, HarbourVest is</p> <p>20 providing to the Debtor certain releases</p> <p>21 for its litigation claims; is that</p> <p>22 correct?</p> <p>23 MS. WEISGERBER: Objection to</p> <p>24 form.</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 127</p> <p>1 Confidential - Pugatch</p> <p>2 Q. So how has HarbourVest allocated</p> <p>3 value, as far as this Settlement Agreement</p> <p>4 is concerned?</p> <p>5 And to make sure we're on the</p> <p>6 same page about what I'm asking,</p> <p>7 HarbourVest is trading a bundle of sticks,</p> <p>8 right? And there's really two things</p> <p>9 within that bundle of sticks, and please</p> <p>10 confirm that's correct, you're trading</p> <p>11 shares, and in addition, releases; is that</p> <p>12 right? In exchange you're getting back</p> <p>13 claims that have a potential future value.</p> <p>14 So, how have you allocated value</p> <p>15 among the shares transferred and the</p> <p>16 releases that are being granted?</p> <p>17 MR. MORRIS: Objection.</p> <p>18 MS. WEISGERBER: Objection.</p> <p>19 You can go ahead, Mike.</p> <p>20 A. Yeah. So ultimately we looked</p> <p>21 at it as a package, and so it was less</p> <p>22 about the attribution of value between the</p> <p>23 two different sticks, as you described it,</p> <p>24 and more about the overall package value</p> <p>25 in exchange for the transfer of our</p>
<p style="text-align: right;">Page 128</p> <p>1 Confidential - Pugatch</p> <p>2 interest and the release of the claims</p> <p>3 that we had outstanding as the Debtor.</p> <p>4 MR. KANE: Now, I want to turn</p> <p>5 your attention to what I've included</p> <p>6 in the chat. You can pull it down</p> <p>7 pretty easily if you want. But it</p> <p>8 would be Holdco Depo Exhibit 2. If</p> <p>9 that would be easier than a screen</p> <p>10 share, if you'd like, I'm happy to do</p> <p>11 that as well.</p> <p>12 MS. WEISGERBER: Which document</p> <p>13 is it, John? Because I just can't</p> <p>14 pull stuff off the Zoom right now.</p> <p>15 MR. KANE: Oh, I'm sorry. It's</p> <p>16 the Settlement Agreement with the</p> <p>17 attached exhibits. I can share my</p> <p>18 screen so we're all on the same page.</p> <p>19 Just to confirm we're looking at</p> <p>20 the same thing, here's the Settlement</p> <p>21 Agreement. There's a docket entry at</p> <p>22 the top so you can see it, 1631 filed</p> <p>23 by the Debtor 12/24/20.</p> <p>24 This is Exhibit 1 to the</p> <p>25 Declaration of John Morris in Support</p>	<p style="text-align: right;">Page 129</p> <p>1 Confidential - Pugatch</p> <p>2 of Debtor's Motion for an Entry</p> <p>3 Approving Settlement with HarbourVest.</p> <p>4 BY MR. KANE:</p> <p>5 Q. Now, this Settlement Agreement</p> <p>6 is a document that you assisted in</p> <p>7 negotiations; is that correct?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And here in Section 1B,</p> <p>10 this addresses the transfer of the shares</p> <p>11 of the HarbourVest entities to a Debtor</p> <p>12 affiliate; is that correct?</p> <p>13 MS. WEISGERBER: Objection to</p> <p>14 form.</p> <p>15 A. Correct.</p> <p>16 Q. Is that your understanding,</p> <p>17 Mr. Pugatch?</p> <p>18 A. Yes, correct.</p> <p>19 Q. Okay. Thank you. Section 4A,</p> <p>20 and is this your understanding that</p> <p>21 HarbourVest is representing that it has</p> <p>22 the authority to enter into this agreement</p> <p>23 and to transfer the shares to the Debtor's</p> <p>24 affiliate if this is approved?</p> <p>25 MS. WEISGERBER: Objection to</p>

<p style="text-align: right;">Page 130</p> <p>1 Confidential - Pugatch</p> <p>2 form. The document speaks for itself.</p> <p>3 Is that a question, John?</p> <p>4 MR. KANE: Yeah. I asked if</p> <p>5 that was his understanding, that this</p> <p>6 is a representation by HarbourVest</p> <p>7 that it has the authority to transfer</p> <p>8 the shares if the Settlement Agreement</p> <p>9 is approved.</p> <p>10 MS. WEISGERBER: Objection to</p> <p>11 form. Objection to the extent it</p> <p>12 calls for a legal conclusion.</p> <p>13 To the extent you have a</p> <p>14 nonlegal conclusion, non-privileged</p> <p>15 understanding, Mike, you can share</p> <p>16 that.</p> <p>17 A. Yeah, I'm just saying I can only</p> <p>18 answer that based on conversations with</p> <p>19 counsel.</p> <p>20 MR. KANE: Okay. I won't push</p> <p>21 that. That's fine.</p> <p>22 Q. If we keep going down here as</p> <p>23 part of this attachment, there's a</p> <p>24 Transfer Agreement, Exhibit A to the</p> <p>25 Settlement Agreement. Are you familiar</p>	<p style="text-align: right;">Page 131</p> <p>1 Confidential - Pugatch</p> <p>2 with this document?</p> <p>3 A. Yes. I've seen it.</p> <p>4 Q. And did you assist with the</p> <p>5 preparation or negotiation of this</p> <p>6 Agreement?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Did you understand that</p> <p>9 HarbourVest would need the consent of the</p> <p>10 HCLOF portfolio advisor to effectuate the</p> <p>11 transfer?</p> <p>12 MS. WEISGERBER: Objection to</p> <p>13 form. Objection to the extent it</p> <p>14 calls for a legal conclusion.</p> <p>15 Mike, if you have a view other</p> <p>16 than from privileged conversation, you</p> <p>17 can answer, otherwise do not answer.</p> <p>18 A. Yeah, I'm sorry. I can only</p> <p>19 answer that based on conversation with</p> <p>20 counsel and the read of the document.</p> <p>21 Q. So to make sure I understand</p> <p>22 that, you have no independent</p> <p>23 understanding of whether or not consent</p> <p>24 was required from the portfolio manager</p> <p>25 before you could effectuate a transfer; is</p>
<p style="text-align: right;">Page 132</p> <p>1 Confidential - Pugatch</p> <p>2 that correct?</p> <p>3 MS. WEISGERBER: Same objection.</p> <p>4 I think you can give your</p> <p>5 general understanding, but then not</p> <p>6 get into specific conversations.</p> <p>7 A. My understanding of that is</p> <p>8 based on conversations with counsel, but</p> <p>9 yes, that is my understanding, John.</p> <p>10 Q. Okay. I'm going to highlight a</p> <p>11 passage here. Can you see this</p> <p>12 highlighted area? "Whereas, the Portfolio</p> <p>13 Manager desires to consent to such</p> <p>14 transfers and to the admission of</p> <p>15 Transferee as a shareholder..."</p> <p>16 Were you aware of that</p> <p>17 provision?</p> <p>18 MS. WEISGERBER: Objection to</p> <p>19 form.</p> <p>20 A. Yes. It's in the document.</p> <p>21 Q. Do you have any understanding of</p> <p>22 why that provision was included in this</p> <p>23 agreement?</p> <p>24 MS. WEISGERBER: Objection to</p> <p>25 form. Objection to the extent it</p>	<p style="text-align: right;">Page 133</p> <p>1 Confidential - Pugatch</p> <p>2 calls for a privileged conversation.</p> <p>3 A. As I answered before, based on</p> <p>4 conversations with counsel, my</p> <p>5 understanding is that consent is requiring</p> <p>6 in connection to transfer.</p> <p>7 Q. I'd like to turn your attention</p> <p>8 now – this is a document you've seen</p> <p>9 before during your deposition. This is</p> <p>10 the member's agreement related to the</p> <p>11 Company for HCLOF. This is previously</p> <p>12 produced by the Debtor, that's why it's</p> <p>13 got the Bates stamp on it. This is dated</p> <p>14 November 15, 2017.</p> <p>15 Are you familiar with this</p> <p>16 document?</p> <p>17 A. Yes.</p> <p>18 Q. Do you see on Line 14, in the</p> <p>19 between, on Page 1 shows Highland HCF</p> <p>20 Advisor, Ltd. as the portfolio manager?</p> <p>21 A. Yes, I see that.</p> <p>22 Q. I know there was quite a bit</p> <p>23 of – quite a few questions about this</p> <p>24 earlier, but you understand that Highland</p> <p>25 HCF Advisor, Ltd. is still the HCLOF</p>

<p style="text-align: right;">Page 134</p> <p>1 Confidential - Pugatch</p> <p>2 portfolio manager?</p> <p>3 MS. WEISGERBER: Objection to</p> <p>4 form.</p> <p>5 A. Honestly, I don't have – I</p> <p>6 don't have enough information to answer</p> <p>7 that definitively.</p> <p>8 Q. Okay. Going back to the</p> <p>9 Settlement Agreement, there's a reference</p> <p>10 in here to a defined term, "portfolio</p> <p>11 manager."</p> <p>12 Do you see that?</p> <p>13 A. Yep.</p> <p>14 Q. And is this the same one that's</p> <p>15 listed in the Member Agreement, Highland</p> <p>16 HCF Advisor, Ltd.?</p> <p>17 A. I believe that seems to be the</p> <p>18 position, yes.</p> <p>19 Q. Okay. So when we're talking</p> <p>20 about down here, "Whereas, the Portfolio</p> <p>21 Manager desires to consent," this consent</p> <p>22 provision is referring to the same</p> <p>23 definition of portfolio manager that's</p> <p>24 included in this Member Agreement; is that</p> <p>25 correct?</p>	<p style="text-align: right;">Page 135</p> <p>1 Confidential - Pugatch</p> <p>2 MR. MORRIS: Objection to the</p> <p>3 form.</p> <p>4 MS. WEISGERBER: Objection –</p> <p>5 same objections. Objection to the</p> <p>6 extent it calls for privileged</p> <p>7 information.</p> <p>8 A. That sounds like a legal</p> <p>9 conclusion.</p> <p>10 Q. I would have thought it was</p> <p>11 reading, Mr. Pugatch.</p> <p>12 A. Well, if you're asking me to</p> <p>13 definitively confirm that, that sounds</p> <p>14 like a legal interpretation.</p> <p>15 Q. Let me ask that a different way.</p> <p>16 Do you understand that the</p> <p>17 portfolio manager is listed as Highland</p> <p>18 HCF Advisor, Ltd. in the Member Agreement?</p> <p>19 A. Yes.</p> <p>20 Q. And in this Transfer Agreement,</p> <p>21 the portfolio manager is listed as</p> <p>22 Highland HCF Advisor, Ltd.?</p> <p>23 A. Yes.</p> <p>24 Q. And those are the same entities?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 136</p> <p>1 Confidential - Pugatch</p> <p>2 Q. All right. Are you familiar</p> <p>3 with Section 6 of this Member Agreement?</p> <p>4 A. (Nods.)</p> <p>5 Q. Have you ever read this</p> <p>6 document?</p> <p>7 A. I have.</p> <p>8 Q. Okay. And can you give me your</p> <p>9 understanding of what must take place</p> <p>10 under this document for HarbourVest to</p> <p>11 transfer its shares?</p> <p>12 MS. WEISGERBER: Object to the</p> <p>13 form. Object to the extent it calls</p> <p>14 for a legal conclusion. Object to the</p> <p>15 extent it calls for any privileged</p> <p>16 information or conversations.</p> <p>17 Mike, to the extent you have an</p> <p>18 independent understanding, separate</p> <p>19 from conversations with counsel, you</p> <p>20 can answer the question.</p> <p>21 A. I would say my understanding of</p> <p>22 what's required in connection with the</p> <p>23 transfer is based on conversations with</p> <p>24 counsel.</p> <p>25 Q. Do you believe that the</p>	<p style="text-align: right;">Page 137</p> <p>1 Confidential - Pugatch</p> <p>2 HarbourVest entities can transfer its</p> <p>3 shares without obtaining the consent of</p> <p>4 the portfolio manager?</p> <p>5 MS. WEISGERBER: Objection to</p> <p>6 form. Objection to the extent it</p> <p>7 calls for a legal conclusion.</p> <p>8 Same instruction, Mike, as to</p> <p>9 privileged conversations.</p> <p>10 A. Again, my view on that would be</p> <p>11 based on conversations with counsel.</p> <p>12 Q. Are you aware of whether</p> <p>13 HarbourVest provided any notice to other</p> <p>14 members of its intent to transfer its</p> <p>15 shares to the Debtor's affiliate under the</p> <p>16 Settlement Agreement, other than the</p> <p>17 filing of the 9019 motion?</p> <p>18 MS. WEISGERBER: Same objection.</p> <p>19 But there is a factual question in</p> <p>20 there if you can answer it, Mike, but</p> <p>21 no privileged conversation.</p> <p>22 A. Yeah, I'm not aware of that.</p> <p>23 Q. Did you provide members 30 days</p> <p>24 after the receipt of notice of</p> <p>25 HarbourVest's intent to transfer its</p>



<p style="text-align: right;">Page 138</p> <p>1 Confidential - Pugatch</p> <p>2 shares to the Debtor's affiliate and</p> <p>3 provide those members with an opportunity</p> <p>4 to purchase their pro rata amount of the</p> <p>5 shares?</p> <p>6 MS. WEISGERBER: Same objection.</p> <p>7 A. No.</p> <p>8 Q. And just to make sure I'm not</p> <p>9 asking this question in a way that you</p> <p>10 don't understand what I'm asking: Do you</p> <p>11 see this highlighted provision here?</p> <p>12 A. Yes.</p> <p>13 Q. I'm asking whether HarbourVest</p> <p>14 provided members 30 days after the receipt</p> <p>15 of a notice letter and an opportunity to</p> <p>16 purchase their entire pro rata share of</p> <p>17 the shares proposed to be transferred by</p> <p>18 the HarbourVest entities?</p> <p>19 MS. WEISGERBER: Objection to</p> <p>20 form. Objection to the extent it</p> <p>21 calls for privileged conversations or</p> <p>22 a legal conclusion. Objection to the</p> <p>23 extent it's asking about one piece of</p> <p>24 the document.</p> <p>25 And you're welcome to look at</p>	<p style="text-align: right;">Page 139</p> <p>1 Confidential - Pugatch</p> <p>2 the full document if you'd like, Mike.</p> <p>3 I think it was one of the ones that</p> <p>4 was E-mailed as well, or maybe you</p> <p>5 were able to pull it down.</p> <p>6 THE WITNESS: Yeah, no, I was.</p> <p>7 Thank you.</p> <p>8 A. And I'm sorry, John, could you</p> <p>9 just repeat the question?</p> <p>10 BY MR. KANE:</p> <p>11 Q. Yeah, sure, absolutely. And I'm</p> <p>12 not calling for any conversations with</p> <p>13 counsel. I'm asking you if you know</p> <p>14 whether HarbourVest did something or not.</p> <p>15 So let's -- let's keep it to that, because</p> <p>16 I --</p> <p>17 MR. KANE: Erica, I appreciate</p> <p>18 your concerns, but I really don't want</p> <p>19 to have any disclosures from Mike</p> <p>20 about his discussions with you on</p> <p>21 whether something needed to be done or</p> <p>22 not. I'm asking simply the facts of</p> <p>23 whether HarbourVest did it or not.</p> <p>24 Q. So did HarbourVest provide</p> <p>25 notice, 30 days' notice, to the members</p>
<p style="text-align: right;">Page 140</p> <p>1 Confidential - Pugatch</p> <p>2 listed under this Member Agreement of</p> <p>3 HarbourVest's intent to transfer the</p> <p>4 shares that are the subject to the</p> <p>5 Settlement Agreement?</p> <p>6 A. No.</p> <p>7 Q. Has HarbourVest provided any</p> <p>8 members with a right of first refusal and</p> <p>9 a cash purchase price for which it would</p> <p>10 sell its shares instead of transferring</p> <p>11 those shares to the Debtor or the Debtor's</p> <p>12 affiliate under the Settlement Agreement?</p> <p>13 MS. WEISGERBER: Same</p> <p>14 objections. Objection to form.</p> <p>15 Objection to extent it calls for a</p> <p>16 legal conclusion or privileged</p> <p>17 conversations, including -- regarding</p> <p>18 the specifics of that provision.</p> <p>19 I don't think that's a purely</p> <p>20 factual question.</p> <p>21 Q. Did HarbourVest offer to sell</p> <p>22 the shares to the other members? That's</p> <p>23 not a factual question?</p> <p>24 MS. WEISGERBER: Objection --</p> <p>25 A. On the basis of that factual</p>	<p style="text-align: right;">Page 141</p> <p>1 Confidential - Pugatch</p> <p>2 question, no.</p> <p>3 Q. So let me ask this question</p> <p>4 again, I don't recall if I got an answer</p> <p>5 or not.</p> <p>6 Did HarbourVest affirmatively</p> <p>7 seek to obtain the consent of Highland HCF</p> <p>8 Advisors to transfer its shares to the</p> <p>9 Debtor affiliate under the Settlement</p> <p>10 Agreement?</p> <p>11 MS. WEISGERBER: Same</p> <p>12 objections. Same instruction</p> <p>13 regarding the privileged conversation.</p> <p>14 A. I mean, as a Highland-affiliated</p> <p>15 entity, the Debtor, who's obviously the</p> <p>16 other party here involved in the transfer,</p> <p>17 you know, was involved in these</p> <p>18 discussions.</p> <p>19 Q. I'm sorry. Would you mind</p> <p>20 clarifying? Did you say that Highland HCF</p> <p>21 Advisors was involved in those discussions</p> <p>22 or the Debtor was involved in those</p> <p>23 discussions and you assume Highland HCF</p> <p>24 Advisors was?</p> <p>25 MS. WEISGERBER: Objection to</p>

<p style="text-align: right;">Page 142</p> <p>1 Confidential - Pugatch</p> <p>2 form. Misstates testimony.</p> <p>3 A. Sorry, could you just repeat the</p> <p>4 question, please, John?</p> <p>5 Q. Yes, Mr. Pugatch.</p> <p>6 I'm actually just trying to get</p> <p>7 some clarification from you, because I</p> <p>8 don't think I understood your answer</p> <p>9 about -- I had asked just -- again, I</p> <p>10 don't want any correspondence with your</p> <p>11 counsel or what your counsel advised, I'm</p> <p>12 asking: Do you know whether HarbourVest</p> <p>13 sought written consent from Highland HCF</p> <p>14 Advisor for its -- or to transfer its</p> <p>15 shares to the Debtor or the Debtor's</p> <p>16 affiliate under the Settlement Agreement?</p> <p>17 MS. WEISGERBER: Same objection.</p> <p>18 A. My understanding is HarbourVest</p> <p>19 did not explicitly have those</p> <p>20 conversations or seek that consent.</p> <p>21 Q. Okay. Are you aware of whether</p> <p>22 HarbourVest received any written consent</p> <p>23 from Highland HCF Advisors, other than</p> <p>24 what's in the Transfer Agreement attached</p> <p>25 to the Settlement Agreement?</p>	<p style="text-align: right;">Page 143</p> <p>1 Confidential - Pugatch</p> <p>2 A. I am not.</p> <p>3 MS. WEISGERBER: Same objection.</p> <p>4 Q. Do you know if HarbourVest has</p> <p>5 any written consent? Not just to seek it,</p> <p>6 but do you know if HarbourVest has a piece</p> <p>7 of paper, other than the transfer</p> <p>8 agreement, in which Highland HCF advisors</p> <p>9 provided its consent to the transfer of</p> <p>10 shares to the Debtor's affiliate?</p> <p>11 MS. WEISGERBER: Same</p> <p>12 objections.</p> <p>13 A. I would have to speak with</p> <p>14 counsel. I am not aware of that directly,</p> <p>15 no.</p> <p>16 Q. Are you aware of whether</p> <p>17 HarbourVest had any correspondence with</p> <p>18 HCLOF representatives about effectuating</p> <p>19 the transfer of the shares to the Debtor's</p> <p>20 affiliate under the Settlement Agreement?</p> <p>21 MS. WEISGERBER: Same objection.</p> <p>22 You can answer.</p> <p>23 A. We have had discussions with</p> <p>24 them, yes.</p> <p>25 Q. Did HCLOF representatives</p>
<p style="text-align: right;">Page 144</p> <p>1 Confidential - Pugatch</p> <p>2 provide consent, whether written or</p> <p>3 otherwise, to the transfer?</p> <p>4 A. I am not aware that that consent</p> <p>5 has been provided as of yet.</p> <p>6 Q. Are you aware of whether any</p> <p>7 HarbourVest representatives have had</p> <p>8 conversations with the Debtor's</p> <p>9 representatives about the necessity of</p> <p>10 consent to the transfer of their shares?</p> <p>11 MS. WEISGERBER: Objection to</p> <p>12 form --</p> <p>13 MR. KANE: I'll re-ask the</p> <p>14 question. I want to clarify that</p> <p>15 point.</p> <p>16 BY MR. KANE:</p> <p>17 Q. Mr. Pugatch, are you aware of</p> <p>18 whether any HarbourVest representatives</p> <p>19 had conversations with the Debtor's</p> <p>20 representatives about the necessity of</p> <p>21 obtaining the HCLOF portfolio manager's</p> <p>22 written consent before transferring the</p> <p>23 shares to the Debtor's representative or</p> <p>24 affiliate under the terms of the</p> <p>25 Settlement Agreement?</p>	<p style="text-align: right;">Page 145</p> <p>1 Confidential - Pugatch</p> <p>2 MS. WEISGERBER: Objection to</p> <p>3 form.</p> <p>4 And, John, I'm sorry to do this,</p> <p>5 can you just clarify what you mean by</p> <p>6 "representative"?</p> <p>7 MR. KANE: Yeah. I mean,</p> <p>8 anybody that has agency authority to</p> <p>9 act on behalf of the Debtor in</p> <p>10 negotiations, in the preparation of</p> <p>11 the documents, in negotiation of the</p> <p>12 terms of the Settlement Agreement.</p> <p>13 I mean, I think that it's, you</p> <p>14 know, a pretty broad term here.</p> <p>15 MS. WEISGERBER: Objection to</p> <p>16 form. Objection to the extent it</p> <p>17 calls for discussions with counsel.</p> <p>18 As a factual matter, if you have</p> <p>19 an answer, you can give it.</p> <p>20 A. I'm aware of conversations that</p> <p>21 have taken place about all of the terms of</p> <p>22 the Transfer Agreement in connection with</p> <p>23 the settlement, with all parties.</p> <p>24 Q. Is it your understanding based</p> <p>25 on those conversations that written</p>

<p style="text-align: right;">Page 146</p> <p>1 Confidential - Pugatch</p> <p>2 consent of the portfolio manager as</p> <p>3 defined in the Transfer Agreement was</p> <p>4 required before the shares could be</p> <p>5 transferred under the Settlement</p> <p>6 Agreement?</p> <p>7 MS. WEISGERBER: Objection to</p> <p>8 the form. Objection to the extent it</p> <p>9 calls for a legal conclusion or</p> <p>10 privileged conversation. And I think</p> <p>11 that one does, John.</p> <p>12 A. Yeah, I can only answer that</p> <p>13 based on conversation with lawyers.</p> <p>14 Q. Wasn't the question whether –</p> <p>15 I'm sorry. Maybe I forgot my own</p> <p>16 question.</p> <p>17 But I thought it was based on</p> <p>18 your conversations with the Debtor's</p> <p>19 representative, was it your understanding,</p> <p>20 not based on your conversation with</p> <p>21 counsel.</p> <p>22 MS. WEISGERBER: Can you repeat</p> <p>23 the whole question because I</p> <p>24 definitely misunderstood it then too.</p> <p>25 Q. Okay. Based on your</p>	<p style="text-align: right;">Page 147</p> <p>1 Confidential - Pugatch</p> <p>2 conversations with the Debtor's</p> <p>3 representatives, was it your understanding</p> <p>4 that the consent of the portfolio manager</p> <p>5 was required for the shares to be</p> <p>6 transferred from the HarbourVest entities</p> <p>7 to the Debtor's affiliate under the terms</p> <p>8 of the Settlement Agreement?</p> <p>9 MS. WEISGERBER: Okay. Same</p> <p>10 objections. Also objection to the</p> <p>11 extent there is a common interest</p> <p>12 privilege.</p> <p>13 A. I don't recall having that</p> <p>14 explicit conversation with representative</p> <p>15 of the Debtor.</p> <p>16 MR. KANE: I'll pass the</p> <p>17 witness.</p> <p>18 Thank you, Mr. Pugatch.</p> <p>19 MR. MORRIS: Anybody else?</p> <p>20 Thank you, all.</p> <p>21 MS. WEISGERBER: Can we –</p> <p>22 before we break, could we have a</p> <p>23 two-minute break and then come back</p> <p>24 before we conclude.</p> <p>25 BY MS. WEISGERBER:</p>
<p style="text-align: right;">Page 148</p> <p>1 Confidential - Pugatch</p> <p>2 Q. Mr. Pugatch, during Mr. Wilson's</p> <p>3 questioning, I believe his last question</p> <p>4 related to identifying as between two</p> <p>5 choices the primary source or the cause of</p> <p>6 HarbourVest's damages.</p> <p>7 In your opinion, is – are</p> <p>8 HarbourVest damages attributable to any</p> <p>9 one cause?</p> <p>10 A. No, I would say there were</p> <p>11 multiple root causes of the damages and</p> <p>12 diminution in value that was suffered in</p> <p>13 connection with the investment.</p> <p>14 MS. WEISGERBER: Okay. I don't</p> <p>15 have any further questions.</p> <p>16 MR. WILSON: I think I'd like to</p> <p>17 ask a couple more.</p> <p>18 BY MR. WILSON:</p> <p>19 Q. Mr. Pugatch, I think you</p> <p>20 testified earlier that the investment in</p> <p>21 HCLOF was comprised of multiple CLOs,</p> <p>22 correct?</p> <p>23 A. Correct.</p> <p>24 Q. And some of those CLOs were</p> <p>25 managed by Acis, to your understanding?</p>	<p style="text-align: right;">Page 149</p> <p>1 Confidential - Pugatch</p> <p>2 MS. WEISGERBER: Objection.</p> <p>3 A. Correct.</p> <p>4 MS. WEISGERBER: Just to</p> <p>5 clarify, John, is this within the</p> <p>6 scope of the questions I asked</p> <p>7 Mr. Pugatch?</p> <p>8 MR. WILSON: I believe it is.</p> <p>9 I'm going to be really short. But</p> <p>10 so –</p> <p>11 MS. WEISGERBER: I would like to</p> <p>12 have a standing objection to the</p> <p>13 extent it's not within the scope of</p> <p>14 the questions that was asked to</p> <p>15 Mr. Pugatch.</p> <p>16 BY MR. WILSON:</p> <p>17 Q. So some of those CLOs you</p> <p>18 contend are managed by Acis?</p> <p>19 MS. WEISGERBER: Objection to</p> <p>20 form.</p> <p>21 A. A majority.</p> <p>22 Q. And just generally, do you</p> <p>23 contend that Highland managed the balance</p> <p>24 of those CLOs?</p> <p>25 MR. MORRIS: Objection to the</p>

<p style="text-align: right;">Page 150</p> <p>1 Confidential - Pugatch</p> <p>2 form of the question.</p> <p>3 MS. WEISGERBER: Objection.</p> <p>4 Same objection.</p> <p>5 A. Yes.</p> <p>6 Q. Yes. Okay. Thank you.</p> <p>7 And I just had two more</p> <p>8 questions.</p> <p>9 So, if there was going to be a</p> <p>10 reset, that would have to be done at the</p> <p>11 CLO level, each CLO would have to be</p> <p>12 reset?</p> <p>13 MR. MORRIS: Objection.</p> <p>14 MS. WEISGERBER: Objection to</p> <p>15 form.</p> <p>16 A. That is correct.</p> <p>17 Q. And do you know of any specific</p> <p>18 CLO that requested a reset but was not</p> <p>19 granted a reset?</p> <p>20 MR. MORRIS: Objection to form.</p> <p>21 MS. WEISGERBER: Same objection.</p> <p>22 And foundation.</p> <p>23 A. When you say "CLOs who requested</p> <p>24 a reset," can be more clear, please?</p> <p>25 Q. We just talked about how this</p>	<p style="text-align: right;">Page 151</p> <p>1 Confidential - Pugatch</p> <p>2 investment is comprised of multiple CLOs</p> <p>3 and each one of those CLOs would have to</p> <p>4 be reset, according to its own terms, I</p> <p>5 guess. Do you know of any one of those</p> <p>6 CLOs that requested a reset?</p> <p>7 MR. MORRIS: Objection to the</p> <p>8 form of the question.</p> <p>9 MS. WEISGERBER: Same objection.</p> <p>10 A. I'm aware of Highland having in</p> <p>11 its capacity as manager of the HCLOF</p> <p>12 having requested or pursued resets of</p> <p>13 certain of the Acis HCLOs.</p> <p>14 Q. Your understanding is that</p> <p>15 Highland requested a reset of the Acis</p> <p>16 CLOs?</p> <p>17 MS. WEISGERBER: Objection to</p> <p>18 form.</p> <p>19 A. I'm sorry. I'm trying to</p> <p>20 understand what you said.</p> <p>21 MS. WEISGERBER: I'm really</p> <p>22 wondering how this relates at all to</p> <p>23 the scope of the questions I asked Mr.</p> <p>24 Pugatch on follow up.</p> <p>25 I think it's time to wrap this</p>
<p style="text-align: right;">Page 152</p> <p>1 Confidential - Pugatch</p> <p>2 up, John.</p> <p>3 MR. WILSON: This was my last</p> <p>4 question, I just need an answer to it.</p> <p>5 And I think he tried to answer, but I</p> <p>6 didn't understand what he said.</p> <p>7 MS. WEISGERBER: Objection. Can</p> <p>8 you re-ask the question so we have a</p> <p>9 clear question.</p> <p>10 MR. WILSON: Well, Madam Court</p> <p>11 Reporter, can you read back his last</p> <p>12 response?</p> <p>13 (Record read.)</p> <p>14 BY MR. WILSON:</p> <p>15 Q. Can you repeat what you intended</p> <p>16 to answer to the last question?</p> <p>17 MS. WEISGERBER: Same objection.</p> <p>18 If you recall, Mike.</p> <p>19 A. I'm sorry, John. Can you just</p> <p>20 repeat the question, please, make sure I'm</p> <p>21 answering what you want me to answer.</p> <p>22 Q. My question is the same as it's</p> <p>23 been: Are you aware of any CLO that</p> <p>24 requested a reset and was not granted one?</p> <p>25 MS. WEISGERBER: Objection to</p>	<p style="text-align: right;">Page 153</p> <p>1 Confidential - Pugatch</p> <p>2 form. Objection to foundation.</p> <p>3 MR. MORRIS: Objection to the</p> <p>4 form of the question.</p> <p>5 A. Again, my understanding is the</p> <p>6 CLOs do not request the reset. Highland,</p> <p>7 as manager of HCLOF in its capacity as</p> <p>8 majority equity owner of certain of the</p> <p>9 CLOs, have requested a reset post our</p> <p>10 original investment.</p> <p>11 Q. Okay.</p> <p>12 MR. WILSON: I'll pass the</p> <p>13 witness.</p> <p>14 MS. WEISGERBER: I think we're</p> <p>15 done.</p> <p>16 THE REPORTER: Will everyone put</p> <p>17 their orders on the record, please?</p> <p>18 MR. MORRIS: John Morris for the</p> <p>19 Debtor. Expedited, please.</p> <p>20 MR. WILSON: John Wilson. I'm</p> <p>21 not sure what arrangements my office</p> <p>22 has previously made, but we want an</p> <p>23 expedited transcript, as well.</p> <p>24 THE REPORTER: Do you want a</p> <p>25 rough too?</p>

Page 154	Page 155
1 Confidential - Pugatch	1
2 MR. WILSON: Yes, please.	2 ACKNOWLEDGEMENT OF DEPONENT
3 MR. MORRIS: Yes, please.	3
4 MS. WEISGERBER: Same for	4 I, MICHAEL PUGATCH, do hereby
5 HarbourVest, please.	5 acknowledge that I have read and
6 MR. MALONEY: I don't need an	6 examined the foregoing testimony, and
7 expedited transcript. I'd just be	7 the same is a true, correct and
8 happy to get one regular copy. I'll	8 complete transcription of the
9 take whatever you would produce in the	9 testimony given by me, and any
10 ordinary course. Same as what	10 corrections appear on the attached
11 everyone else ordered.	11 Errata sheet signed by me.
12 (Time Noted: 4:35 p.m. EDT.)	12
13	13
14	14 _____
15	15 (DATE) (SIGNATURE)
16	16
17	17
18	18
19	19
20	20
21	21
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23	23
24	24
25	25

  

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1	1 ERRATA SHEET
2 CERTIFICATE OF SHORTHAND REPORTER-NOTARY	2 Case Name:
3 PUBLIC	3 Deposition Date:
4 I, Amanda Gorrone, the officer	4 Deponent:
5 before whom the foregoing deposition	5 Pg. No. Now Reads Should Read Reason
6 was taken, do hereby certify that the	6 _____
7 foregoing transcript is a true and	7 _____
8 correct record of the testimony given;	8 _____
9 that said testimony was taken by me	9 _____
10 stenographically and thereafter	10 _____
11 reduced to typewriting under my	11 _____
12 direction; and that I am neither	12 _____
13 counsel for, related to, nor employed	13 _____
14 by any of the parties to this case and	14 _____
15 have no interest, financial or	15 _____
16 otherwise, in its outcome.	16 _____
17 IN WITNESS WHEREOF, I have	17 _____
18 hereunto set my hand this 12th day of	18 _____
19 January, 2021.	19 _____
20	20
21 _____	21 _____
22 AMANDA GORRONE, CLR	22 Signature of Deponent
23 CLR NO: 052005 - 01	22 SUBSCRIBED AND SWORN BEFORE ME
24	23 THIS ____ DAY OF _____, 20__.
25 Notary Public in and for the State of New	24 _____
York	25 (Notary Public) MY COMMISSION EXPIRES: _____
County of Suffolk	



Index: \$1,570,429..additional

<b>\$</b>	<b>11/29/2017</b> 79:3	<b>2020</b> 16:12 59:3 109:21 112:13	<b>49.98</b> 27:16 65:20 66:3	<b>accept</b> 110:17
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<b>\$1.02</b> 112:19	<b>122</b> 61:9	<b>23</b> 109:20	<b>4A</b> 129:19	<b>accurate</b> 33:14 93:24
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## **EXHIBIT 8**

005248

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*Counsel for the Debtor and Debtor-in-Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:	)	Chapter 11
	)	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	)	Case No. 19-34054-sgj11
	)	
Debtor.	)	<b>Re: Docket Nos. 1625, 1697, 1706,</b>
	)	<b>1707</b>

**DEBTOR'S OMNIBUS REPLY IN SUPPORT OF DEBTOR'S MOTION FOR  
ENTRY OF AN ORDER APPROVING SETTLEMENT WITH HARBOURVEST  
(CLAIM NOS. 143, 147, 149, 150, 153, 154), AND AUTHORIZING ACTIONS  
CONSISTENT THEREWITH**

<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.





The above-captioned debtor and debtor-in-possession (the “Debtor”) hereby submits this reply (the “Reply”) in support of its *Motion for Entry of an Order Approving Settlement with HarbourVest (Claim No.143,147, 149, 150, 153, 154), and Authorizing Actions Consistent Therewith* [Docket No. 1625] (the “Motion”).<sup>2</sup> In further support of the Motion, the Debtor respectfully states as follows:

### **PRELIMINARY STATEMENT**

1. If granted, the Motion will resolve a \$300 million general unsecured claim against the Debtor’s estate for less than \$16.8 million in actual value.<sup>3</sup> The settlement is another solid achievement for the Debtor and – not surprisingly – is opposed by no one except Mr. Dondero and entities affiliated with him.

2. As discussed in the Motion, in November 2017, HarbourVest invested \$80 million in exchange for a 49.98% membership interest in HCLOF – an entity managed by a subsidiary of the Debtor. The balance of HCLOF’s interests are held by CLO Holdco, Ltd. (an entity affiliated with Mr. Dondero), the Debtor, and certain of the Debtor’s employees. Subsequent to its investment in HCLOF, HarbourVest incurred substantial losses on its investment in HCLOF and filed claims against the Debtor’s estate.

3. HarbourVest asserts claims for fraud, fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, negligent misrepresentation, breach of fiduciary duty

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<sup>2</sup> All capitalized terms used but not defined herein have the meanings given to them in the Motion.

<sup>3</sup> Under the proposed settlement, HarbourVest would receive an allowed, general unsecured claim of \$45 million and an allowed, subordinated claim of \$35 million. Based on the estimated recovery for general unsecured creditors of 87.44% (which is a recovery based on certain outdated assumptions discussed *infra*), HarbourVest’s \$45 million general unsecured claim is estimated to be worth approximately \$39.3 million and the \$35 million subordinated claim, which is junior to the general unsecured claim, is currently estimated to have value only if there are litigation recoveries. In addition, HarbourVest is transferring to an affiliate of the Debtor its interest in HCLOF, which is estimated to be worth approximately \$22.5 million. Thus, HarbourVest’s estimated recovery on its general unsecured and subordinated claims is estimated at approximately \$16.8 million on a net economic basis. This estimate, however, is dated and is based on the claims that were settled as of the filing of the Debtor’s plan in November 2020.

and unfair prejudice (under Guernsey law), violations of state securities laws, and RICO. In furtherance of these claims, HarbourVest alleges it was misled by the Debtor and its employees, including Mr. Scott Ellington (then the Debtor's general counsel), and that subsequent to investing in HCLOF, Mr. Dondero and the Debtor used HCLOF both as a piggybank to fund the litigation against Acis Capital Management, L.P. ("Acis") and as a scapegoat for the Debtor's litigation strategy, in each case to HarbourVest's substantial detriment.

4. Specifically, HarbourVest alleges that:

- the Debtor and its employees, including Mr. Ellington, misled HarbourVest about its intentions with respect to Mr. Terry's arbitration award against Acis and orchestrated a series of fraudulent transfers and corporate restructurings, the true purpose of which was to denude Acis of assets and make it judgment proof;
- the Debtor and its employees, including Mr. Ellington, misled HarbourVest as to the intent and true purpose of these restructurings and led HarbourVest to believe that Mr. Terry's claims against Acis were meritless and a simple employment dispute that would not affect HarbourVest's investment;
- the Debtor, through Mr. Dondero, improperly exercised control over or misled HCLOF's Guernsey-based board of directors to cause HCLOF to engage in unnecessary, unwarranted, and resource-draining litigation against Acis;
- the Debtor improperly caused HCLOF to pay substantial legal fees of various entities in the Acis bankruptcy that were unwarranted, imprudent, and not properly chargeable to HCLOF; and
- the Debtor used HarbourVest as a scapegoat in its litigation against Acis by asserting that the Debtor's improper conduct and scorched-earth litigation strategy was at HarbourVest's request, which was untrue.

5. The Debtor believed, and continues to believe, that it has viable defenses to HarbourVest's claims. Nevertheless, those defenses would be subject to substantial factual disputes and would require expensive and time-consuming litigation that would likely be resolved only after a lengthy trial all while the Debtor (or its successor) assumes the risk that the defenses might fail. The evidence will show that the proposed settlement is the product of substantial, arm's length – and sometimes quite heated – negotiations between and among the

principals and their counsel. The evidence will also show that one of HarbourVest's primary concerns in settling its claim was that part of that settlement would include the extrication of HarbourVest from the Highland web of entities and the related litigation. The proposed settlement accomplishes that and does so in compliance with HCLOF's governing agreements.

6. Pursuant to the proposed settlement, (a) HarbourVest will receive (i) an allowed, general unsecured claim in the amount of \$45 million, and (ii) an allowed, subordinated claim in the amount of \$35 million; (b) HarbourVest will transfer its 49.98% interest in HCLOF (valued at approximately \$22.5 million) to a wholly-owned subsidiary of the Debtor; and (c) the parties will exchange mutual and general releases. The Debtor believes that the proposed settlement is reasonable and results from the valid and proper exercise of its business judgment. And the Debtor's creditors apparently agree. None of the major parties-in-interest or creditors in this case has objected to the Motion: not the Committee, the Redeemer Committee, Acis, Patrick Daugherty, or UBS.

7. In distinction, the only objecting parties are Mr. Dondero, his family trusts (the Dugaboy Investment Trust ("Dugaboy") and Get Good Trust ("Get Good," and together with Dugaboy, the "Trusts")), and CLO Holdco (a wholly-owned subsidiary of Mr. Dondero's Charitable Donor Advised Fund, L.P. (the "DAF")) (collectively, the "Objectors"). Each of the Objectors has only the most tenuous economic interest in and connection to the Debtor's settlement with HarbourVest. Each of the Objectors is also controlled directly or indirectly by Mr. Dondero who has coordinated each of the Objectors litigation strategies against the Debtor.<sup>4</sup> Mr. Dondero's efforts to litigate every issue in this case – directly and by proxy – should be rebuffed, and the objections overruled. The following is a brief summary of the objections.

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<sup>4</sup> See *Debtor's Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on January 8, 2021* [Adv. Pro. 20-3190-sgj, Docket No. 46], Exhibit Q.

<u>Pleading</u>	<u>Objection/Reservation</u>	<u>Response</u>
<i>Objection of James Dondero</i> [Docket No. 1697] (the “ <u>Dondero Objection</u> ”)	Because HarbourVest was damaged by the injunction entered in Acis, the settlement seeks to revisit this Court’s rulings in Acis.	Mr. Dondero is misdirecting the Court. HarbourVest’s claim arises from the misrepresentations of Mr. Dondero, Mr. Ellington, and others, not this Court’s rulings in Acis, including the failure to disclose the fraudulent transfer of assets.
	The settlement is not fair and equitable because it does not address (1) Acis’s mismanagement, (2) how the Debtor is liable for HarbourVest’s damages, (3) the success on the merits, (4) the costs of litigation, and (5) the Debtor’s ability to realize the value of the HCLOF interests in light of the Acis injunction.	Mr. Dondero ignores the dangers of the litigation and HarbourVest’s claims against the estate for misrepresentation and overestimates the ability to resolve the litigation. The Debtor has assessed the value of the HCLOF interests in light of all factors, including the Acis injunction.
	The HarbourVest settlement represents a substantial windfall to HarbourVest.	Mr. Dondero ignores the economics of this case, which have value breaking in Class 8 (General Unsecured Claims). The value of the settlement is not \$60 million; it is approximately \$16.8 million against a claim of \$300 million. There is no windfall.
	The HarbourVest settlement is improper gerrymandering because it provides HarbourVest with a general unsecured claim and a subordinated claim in order to secure votes for the plan.	The HarbourVest settlement provides for the resolution of HarbourVest’s claim. It is nonsensical to think that the Debtor would reach a settlement with HarbourVest that would include HarbourVest’s rejection of the Debtor’s plan, and there is nothing wrong with requiring acceptance of a plan as part of a settlement. Further, the Debtor does not need HarbourVest’s Class 9 vote to confirm a plan.
<i>Objection of the Dugaboy Investment Trust and Get Good Trust</i> [Docket No. 1706] (the “ <u>Trusts Objection</u> ”)	The settlement represents a radical change in the Debtor’s earlier position on the HarbourVest settlement.	Mr. Dondero ignores the dangers of the litigation and HarbourVest’s claims against the estate for misrepresentation and overestimates the ability to resolve the litigation.
	The settlement appears to buy HarbourVest’s vote.	The HarbourVest settlement provides for the resolution of HarbourVest’s claim. It is nonsensical to think that the Debtor would reach a settlement with HarbourVest that would include HarbourVest’s rejection of the Debtor’s plan, and there is nothing wrong with requiring acceptance of a plan as part of a settlement. Further, the Debtor does not need HarbourVest’s Class 9 vote to confirm a plan.
	No information is provided as to whether the Debtor can acquire HarbourVest’s interest in HCLOF or the value of that interest to the estate.	As discussed below, the HCLOF interest will be transferred to a wholly-owned subsidiary of the Debtor. Mr. Seery will testify as to the benefit of the HCLOF interests to the estate.
<i>Objection of CLO Holdco</i> [Docket No. 1707] (“ <u>CLOH Objection</u> ”)	HarbourVest cannot transfer its interests in HCLOF unless it complies with the right of first refusal.	CLO Holdco misinterprets the operative agreements and tries to create ambiguity where none exists.

8. These objections are just the latest objections filed by Mr. Dondero and his related entities to any attempt by the Debtor to resolve this case,<sup>5</sup> including the Debtor's settlement with Acis [Docket No. 1087] and the seven separate objections filed by Mr. Dondero and his related entities to the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1472] (the "Plan").<sup>6</sup> It will not shock this Court to hear that each of the Objectors is also objecting to the Plan. In contradistinction, the Debtor has heard this Court's admonishments about old Highland's culture of litigation as evidenced by this case, Acis's bankruptcy, and beyond. Although the Debtor has vigorously contested claims when appropriate, the Debtor has also sought to settle claims and limit the senseless fighting. The Debtor has successfully resolved the largest claims against the estate, including the claims of the Redeemer Committee, Acis, and, as recently announced to this Court, UBS. The Debtor would ask this Court to see through the pretense of the Dondero-related entities' objections to the HarbourVest settlement and approve it as a valid exercise of the Debtor's business judgment.

<sup>5</sup> As an example of Mr. Dondero's litigiousness, on January 12, 2021, Mr. Dondero filed notice that he will be appealing the preliminary injunction entered against him earlier on January 12, 2021.

<sup>6</sup> (1) *James Dondero's Objection to Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 1661]; (2) *Objection to Confirmation of the Debtor's Fifth Amended Plan of Reorganization* (filed by Get Good Trust, The Dugaboy Investment Trust) [Docket No. 1667]; (3) *Senior Employees' Limited Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by Scott Ellington, Thomas Sargent, Frank Waterhouse, Isaac Leventon) [Docket No. 1669]; (4) *Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* (filed by Highland Capital Management Fund Advisors, L.P., Highland Fixed Income Fund, Highland Funds I and its series, Highland Funds II and its series, Highland Global Allocation Fund, Highland Healthcare Opportunities Fund, Highland Income Fund, Highland Merger Arbitrage Fund, Highland Opportunistic Credit Fund, Highland Small-Cap Equity Fund, Highland Socially Responsible Equity Fund, Highland Total Return Fund, Highland/iBoxx Senior Loan ETF, NexPoint Advisors, L.P., NexPoint Capital, Inc., NexPoint Real Estate Strategies Fund, NexPoint Strategic Opportunities Fund) [Docket No. 1670]; (5) *NexPoint Real Estate Partners LLC's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexPoint Real Estate Partners LLC f/k/a HCRE Partners LLC) [Docket No. 1673]; (6) *CLO Holdco, Ltd.'s Joinder to Objection to Confirmation of Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. and Supplemental Objections to Plan Confirmation* [Docket No. 1675]; and (7) *NexBank's Objection to Debtor's Fifth Amended Plan of Reorganization* (filed by NexBank Title, Inc., NexBank Securities, Inc., NexBank Capital, Inc., and NexBank) [Docket No. 1676].

## REPLY

### **A. Standing**

9. **James Dondero.** In the Dondero Objection, Mr. Dondero asserts he is a “creditor, indirect equity security holder, and party in interest” in the Debtor’s bankruptcy. While that claim is ostensibly true, it is tenuous at best. On April 8, 2020, Mr. Dondero filed three unliquidated, contingent claims that he promised to update “in the next ninety days.”<sup>7</sup> More than nine months later, Mr. Dondero has yet to “update” those claims to assert an actual claim against the Debtor’s estate.<sup>8</sup>

10. Mr. Dondero’s claim as an “indirect equity security holder” is also a stretch. Mr. Dondero holds no direct equity interest in the Debtor. Mr. Dondero instead owns 100% of Strand Advisors, Inc. (“Strand”), the Debtor’s general partner. Strand, however, holds only 0.25% of the total limited partnership interests in the Debtor through its ownership of Class A limited partnership interests. The Class A limited partnership interests are junior in priority of distribution to the Debtor’s Class B and Class C limited partnership interests. The Class A interests are also junior to all other claims filed against the Debtor. Finally, Mr. Dondero’s recovery on his indirect equity interest is junior to any claims against Strand itself. Consequently, before Mr. Dondero can recover on his “indirect” equity interest, the Debtor’s estate must be solvent, priority distributions to Class B and Class C creditors must be satisfied, and all claims against Strand must be satisfied.

11. **Dugaboy and Get Good.** Dugaboy and Get Good are sham Dondero “trusts” with only the most attenuated standing. Dugaboy has filed three proofs of claim [Claim Nos. 113; 131; 177]. In two of these claims, Dugaboy argues that (1) the Debtor is liable to Dugaboy

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<sup>7</sup> Mr. Dondero filed two other proofs of claim that he has since withdrawn with prejudice. See Docket No. 1460.

<sup>8</sup> Without knowing the nature of the “updates,” the Debtor does not concede that any “updates” would have been procedurally proper and reserves the right to object to any proposed amendment to Mr. Dondero’s claims.



for its postpetition mismanagement of the Highland Multi Strategy Credit Fund, L.P., and (2) this Court should pierce the corporate veil and allow Dugaboy to sue the Debtor for a claim it ostensibly has against the Highland Select Equity Master Fund, L.P. – a Debtor-managed investment vehicle. The Debtor believes that each of the foregoing claims is frivolous and has objected to them. [Docket No. 906].

12. In its third claim, Dugaboy asserts a claim against the Debtor arising from its Class A limited partnership interest in the Debtor (which represents just 0.1866% of the total limited partnership interests in the Debtor). Similarly, Get Good filed three proofs of claim [Claim Nos. 120; 128; 129] arising from its prior ownership of limited partnership interests in the Debtor. Because each these claims arises from an equity interest, the Debtor will seek to subordinate them under 11 U.S.C. § 510 at the appropriate time. As set forth above, these interests are out of the money and are not expected to receive any economic recovery.

13. Consequently, Mr. Dondero, Dugaboy, and Get Good’s standing to object to the HarbourVest settlement is attenuated and their chances of recovery in this case are extremely speculative at best. *See In re Kutner*, 3 B.R. 422, 425 (Bankr. N.D. Tex. 1980) (finding that a party had standing only when it had a “pecuniary interest . . . directly affected by the bankruptcy proceeding”); *see also In re Flintkote Co.*, 486 B.R. 99, 114-15 (Bankr. D. Del. 2012), *aff’d*. 526 B.R. 515 (D. Del. 2014) (a claim that is speculative cannot confer party in interest standing). Mr. Dondero, Dugaboy, and Get Good’s minimal interest in the estate should not allow them to overrule the estate’s business judgment or veto settlements with creditors, especially when no actual creditors and constituents have objected. “[A] bankruptcy judge must not blindly follow the hue and cry of the most vocal special interest groups; rather, [the judge] should consider all salient factors . . . and . . . act to further the diverse interests of the debtor, creditors and equity



holders, alike.” *In re Lionel*, 722 F.2d 1063, 1071 (2d Cir. 1983).

**B. Mr. Dondero’s Objection and his “Trusts” Objection Are Without Merit**

14. As discussed in the Motion, under applicable Fifth Circuit precedent, a bankruptcy court may approve a compromise or settlement as long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See, e.g., In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). In making this determination, courts look to the following factors:

- probability of success in the litigation, with due consideration for the uncertainty of law and fact;
- complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; and
- all other factors bearing on the wisdom of the compromise, including (i) “the paramount interest of creditors with proper deference to their reasonable views” and (ii) whether the settlement is the product of arm’s length bargaining and not of fraud or collusion.

*Official Comm. of Unsecured Creditors v. Cajun Elec. Power Coop. (In re Cajun Elec. Power Coop.)*, 119 F.3d 349, 356 (5th Cir. 1997) (citations omitted). *See also Age Ref. Inc.*, 801 F.3d at 540; *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 918 (5th Cir. 1995).

15. **The Settlement Seeks to Revisit the Acis Orders.** In the Dondero Objection, Mr. Dondero argues that HarbourVest’s claim is based on the financial harm caused to HarbourVest from Acis’s bankruptcy and the orders entered in the Acis bankruptcy. Mr. Dondero extrapolates from this that HarbourVest is seeking to challenge this Court’s rulings in Acis. (Dondero Obj., ¶¶ 17-20) Mr. Dondero misinterprets HarbourVest’s claims and the dangers such claims pose to the Debtor’s estate.

16. HarbourVest’s claims are for fraud, fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, negligent misrepresentation, breach of fiduciary duty

and unfair prejudice (under Guernsey law), violations of state securities laws, and RICO. HarbourVest is not arguing that Acis or this Court caused its damages; HarbourVest is arguing that *the Debtor* – led by Mr. Dondero – (a) misled HarbourVest as to the nature of Mr. Terry’s claims against the Debtor and the litigation with Acis, (b) knowingly and intentionally failed to disclose that the Debtor was engaged in the fraudulent transfer of assets to prevent Mr. Terry from collecting his judgment, and (c) that *the Debtor* – under the control of Mr. Dondero – improperly engaged in a crusade against Mr. Terry and Acis, which substantially damaged HarbourVest and its investment in HCLOF, in each case in order to induce HarbourVest to invest in HCLOF.

17. Again, HarbourVest does not contend that Acis caused its damages. Rather, HarbourVest contends that the fraudulent transfer of assets as part of the Debtor’s crusade against Mr. Terry and Acis and the false statements and omissions about those matters caused HarbourVest to make an investment it would never have made had Mr. Dondero and the Debtor been honest and transparent. The Acis litigation – in HarbourVest’s estimation – never should have happened. Acis did not cause HarbourVest’s damages. Mr. Dondero’s crusade against Mr. Terry and the Debtor’s allegedly fraudulent statements to HarbourVest about the fraudulent transfers, Mr. Terry and Acis caused HarbourVest’s damages.

18. **The HarbourVest Claim Lacks Merit.** In their objections, Mr. Dondero and the Trusts argue that the HarbourVest settlement is not fair and equitable and not in the best interests of the estate because (a) it does not address the Debtor’s arguments against the HarbourVest claims and (b) there is a lack of pending litigation seeking to narrow the claims against the estate. These arguments only summarily address the first two factors of *Cajun Electric*, which deal with success in the litigation, and, in doing so, mischaracterize the dangers to the Debtor’s estate

posed by HarbourVest's claims. (Dondero Obj., ¶¶ 21-25; Trusts Obj., ¶ 18(a))

19. Both the Dondero Objection and – to a much lesser extent - the “Trusts” Objection allege that (a) HarbourVest's losses were caused by Acis and its (mis)management of HCLOF's investments (Dondero Obj., ¶¶ 22, 24), (b) there is no contract that supports HarbourVest's claims (Dondero Obj. ¶ 23; Trusts Obj., ¶ 18(a)), (c) there is no causal connection between HarbourVest's losses and the Debtor's conduct (Dondero Obj., ¶ 24), and (d) the Debtor should litigate all or a portion of HarbourVest's claim before settling (Dondero Obj., ¶ 25). Again, though, as set forth above, both Mr. Dondero and the “Trusts” seek to shift the cause of HarbourVest's damages away from the Debtor's misrepresentations and to Mr. Terry's management of HCLOF's investments. This is simple misdirection.

20. HarbourVest's claims are that it invested in HCLOF based on the Debtor's fraudulent misrepresentations. Fraudulent misrepresentation sounds in tort, not contract. *See, e.g., Clark v. Constellation Brands, Inc.*, 348 Fed. Appx. 19, 21 (5th Cir. 2009) (referring to party's claim based on fraudulent misrepresentation as a tort); *Eastman Chem. Co. v. Niro, Inc.*, 80 F. Supp. 2d 712, 717 (S.D. Tex. 2000) (noting that party had common law duty not to commit intentional tort of fraudulent misrepresentation). There is thus no need for HarbourVest to point to a contractual provision to support its claim.<sup>9</sup> Moreover, in order to defend against HarbourVest's claims, the Debtor would need to elicit evidence showing that its employees did not make misrepresentations to HarbourVest. Such a defense would require the Debtor to rely on the veracity of Mr. Ellington's testimony, among others. That is a high hurdle, and no reasonable person would expect the Debtor to stake the resolution of HarbourVest's \$300 million claim on the Debtor's ability to convince this Court that Mr. Ellington was telling HarbourVest

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<sup>9</sup> Subsequent to filing the Motion, the Objectors requested all agreements between HarbourVest, HCLOF, and the Debtor, and such agreements were provided.

the truth. This is especially true in light of the evidence supporting Mr. Ellington's recent termination for cause and the evidence recently provided by HarbourVest supporting its claim for fraudulent misrepresentations.

21. Finally, neither Mr. Dondero nor the "Trusts" even address the third factor analyzed by the Fifth Circuit: all other factors bearing on the wisdom of the compromise, including "the paramount interest of creditors with proper deference to their reasonable views." This is telling because no creditor or party in interest has objected to the settlement. Mr. Dondero and his proxies' preference for constant litigation should not outweigh the preference of the Debtor and its creditors for a reasonable and expeditious settlement of HarbourVest's claims.

22. **The HarbourVest Settlement Is a Windfall to HarbourVest.** Both the Dondero Objection and the "Trusts" Objection argue that the HarbourVest settlement represents a substantial windfall to HarbourVest. Both Mr. Dondero and the "Trusts" ignore the facts. Specifically, Mr. Dondero argues that HarbourVest is receiving \$60 million dollars in *actual* value for its claims. Mr. Dondero's contention, however, wrongly assumes that both the \$45 million general unsecured claim and the \$35 million subordinated claim provided to HarbourVest under the settlement will be paid 100% in full and that HarbourVest will receive \$80 million in cash. From that \$80 million, Mr. Dondero subtracts \$20 million, which represents the value Mr. Dondero ascribes to HarbourVest's interests in HCLOF that are being transferred to the Debtor. Mr. Dondero's math ignores the reality of this case.

23. The Debtor very clearly disclosed in the projections filed with the *Disclosure Statement for the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, [Docket No. 1473] (the "Projections") that general unsecured claims would receive an 87.44% recovery *only if* the claims of UBS, HarbourVest, Integrated Financial Associates, Inc., Mr.

Daugherty, and the Hunter Mountain Investment Trust were zero. Because of the Debtor's success in settling litigation, that assumption is proving to be inaccurate. Regardless, even if general unsecured claims receive a recovery of 87.44%, because the subordinated claims are junior to the general unsecured claims, the subordinated claims' projected recovery is currently zero. As such, assuming the HCLOF's interests are worth \$22.5 million,<sup>10</sup> the actual recovery to HarbourVest will be less than \$16.8 million. This is not a windfall. HarbourVest's investment in HCLOF was \$80 million and its claim against the estate was over \$300 million. The settlement represents a substantial discount.

24. **Improper Gerrymandering and/or Vote Buying.** Each of Mr. Dondero and the Trusts argue in one form or another that the HarbourVest settlement is improper as it provides HarbourVest a windfall on its claims in exchange for HarbourVest voting to approve the Plan. These unsubstantiated allegations of vote buying should be disregarded. As an initial matter, and as set forth above, HarbourVest is *not* getting a windfall. HarbourVest is accepting a substantial discount in the settlement. HarbourVest's incentive to support the Plan comes from HarbourVest's determination that the Plan is in its best interests. There is also nothing shocking about a settling creditor supporting a plan. Indeed, it would be nonsensical for a creditor to settle its claims and then object to the plan that would pay those claims.

25. More importantly, HarbourVest's votes in Class 9 (Subordinated Claims) are not needed to confirm the Plan. As will be set forth in the voting declaration, Class 2 (Frontier Secured Claim), Class 7 (Convenience Claims), and Class 8 (General Unsecured Claims) have voted in favor of the Plan.<sup>11</sup> In brief, the Plan was approved without HarbourVest's Class 9 vote,

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<sup>10</sup> It is currently anticipated that Mr. James P. Seery, Jr., the Debtor's chief executive officer and chief restructuring officer, will testify as to the value of the HCLOF interests to the Debtor's estate.

<sup>11</sup> The Debtor anticipates that Mr. Dondero and his related entities will argue that neither Class 7 nor Class 8 voted to accept the Plan because of the votes cast against the Plan in those Classes by current and former Debtor











of the Dondero-family's majority (approximately 0.2%). At the time the Members Agreement was executed, CLO Holdco and the Debtor were under common control. Section 6.2 preserves those related entities' control over HCLOF by restricting transactions that would transfer that control unless the ROFO is complied with.

34. As such, and notwithstanding CLO Holdco's protestations, Section 6.1 and Section 6.2 are consistent as written and clear on their face. This consistency is further evidenced by HCLOF's Articles of Incorporation<sup>16</sup> and HCLOF's offering memorandum, which each include language identical to Section 6.1 and 6.2 of the Members Agreement.<sup>17</sup> It seems highly unlikely, if not implausible, that sophisticated parties such as CLO Holdco would include the exact same language in six separate places over three documents without a reason for that language and without the intent that such language be interpreted as it is clearly written – not as CLO Holdco now wants it to be interpreted. Accordingly, since HarbourVest is transferring its interests to HCMLPI, an Affiliate of an initial Member, the plain language of Section 6.2

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<sup>16</sup> See Articles of Incorporation, adopted November 15, 2017, a true and correct copy of which is attached hereto as Exhibit B.

[REDACTED]

(Articles of Incorporation, § 18.1)

[REDACTED]

(*Id.*, § 18.2)

<sup>17</sup> See Offering Memorandum, dated November 15, 2017, a true and correct copy of which is attached hereto as Exhibit C.

[REDACTED]

(Offering Memorandum, page 89)

exempts HarbourVest from having to comply with the ROFO.

35. Third, and finally, CLO Holdco makes the nonsensical argument that because Section 6.2 provides different treatment to similarly situated Members that this Court should re-write Section 6.2. (CLOH Obj., ¶¶ 15-17) Contracts provide different treatment to ostensibly similarly situated parties all the time and no one objects that that creates an absurd result. It just means that different parties bargained for and received different rights.

36. CLO Holdco's attempt to justify why this Court should re-write the Members Agreement to correct the "disparate treatment" is also unavailing. As an example of the absurd result caused by the "disparate treatment," CLO Holdco states: "[B]ecause the HarbourVest Members are technically Affiliates of an initial member (each other), they could obtain control of all of the interests in HCLOF without any Member receiving a Right of First Refusal for any transfer." (*Id.*, ¶ 16) The scenario posited by CLO Holdco, however, is *exactly* the scenario prevented by the clear language of Section 6.2. For HarbourVest to obtain control of HCLOF, it would – as a matter of mathematical necessity – need the interests held by CLO Holdco (49.02%) and/or the Highland Principals (1% in the aggregate). Section 6.2, however, *expressly* prohibits CLO Holdco and the Highland Principals from transferring their interests to HarbourVest or its Affiliates without satisfying the ROFO. As set forth above, it is Section 6.2 that prevents control from being transferred away from the Dondero family without compliance with the ROFO. In fact, Section 6.2 would only break down if the limiting language in Section 6.2 were read out of it in the manner advocated by CLO Holdco.

37. Ultimately, Article 6 of the Members Agreement is clear as written and expressly allows HarbourVest to transfer its interests to HCMLPI. If CLO Holdco had an objection to the rights provided to HarbourVest under the Members Agreement, CLO Holdco

should have raised that objection three and a half years ago before agreeing to the Members Agreement. CLO Holdco should not be allowed to create ambiguity in an unambiguous contract or to re-write that agreement to impose additional restrictions on HarbourVest. *See Clardy Mfg. Co. v. Marine Midland Bus. Loans Inc.*, 88 F.3d 347, 352 (5th Cir. 1996) (enforcing the “unambiguous language in a contract as written,” noting that where a contract is unambiguous, a party may not create ambiguity or “give the contract a meaning different from that which its language imports”) (internal quotations omitted); *Texas v. Am. Tobacco Co.*, 463 F.3d 399, 407 (5th Cir. 2006) (“Courts interpreting unambiguous contracts are confined to the four corners of the document, and cannot look to extrinsic evidence to create an ambiguity.”).

38. It should go without saying, but CLO Holdco (and the other parties to the Members Agreement) should also be required to satisfy their obligations under the Members Agreement and execute the “Adherence Agreement” as required by Section 6.6 of the Members Agreement in connection with the Transfer of HarbourVest’s interests to HCMLPI or any other permitted Transfer.

39. Finally, and notably, although CLO Holdco spends considerable time arguing that HarbourVest should be required to comply with the ROFO, nowhere in the CLOH Objection does CLO Holdco state that it wishes to purchase HarbourVest’s interests in HCLOF. This omission is telling. CLO Holdco and the other Objectors have no interest in actually exercising their alleged right of first refusal contained in the Members Agreement. Rather, their only interest is in causing the Debtor to spend time and money responding to a legion of related (and coordinated) objections.<sup>18</sup>

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<sup>18</sup> *See Debtor’s Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on January 8, 2021* [Adv. Pro. 20-3190-sgj, Docket No. 46], Exhibit Q; Exhibit T (email from Mr. Dondero as forwarded to Mr. Ellington stating “Holy bananas..... make sure we object [to the HarbourVest Settlement]”); Exhibit Y.







## **EXHIBIT 9**

005271

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In Re: ) **Case No. 19-34054-sgj-11**  
) Chapter 11  
)  
HIGHLAND CAPITAL ) Dallas, Texas  
MANAGEMENT, L.P., ) Thursday, January 14, 2021  
) 9:30 a.m. Docket  
Debtor. )  
) - MOTION TO PREPAY LOAN  
) [1590]  
) - MOTION TO COMPROMISE  
) CONTROVERSY [1625]  
) - MOTION TO ALLOW CLAIMS OF  
) HARBOURVEST [1207]  
)

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,  
UNITED STATES BANKRUPTCY JUDGE.

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25 Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

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1                   DALLAS, TEXAS - JANUARY 14, 2021 - 9:41 A.M.

2                   THE CLERK: All rise. The United States Bankruptcy  
3 Court for the Northern District of Texas, Dallas Division, is  
4 now in session, the Honorable Stacey Jernigan presiding.

5                   THE COURT: Good morning. Please be seated. All  
6 right. We're a little late getting started because we had  
7 lots of reading material for the Court today. All right.  
8 This is Judge Jernigan, and we have a couple of Highland  
9 settings. The HarbourVest matters are the primary thing we  
10 have set today, and then we also have a Debtor's motion  
11 pursuant to protocols for authority for Highland Multi-Strat  
12 to prepay a loan.

13                  All right. Well, let's get a few appearances. First, for  
14 the Debtor team, who do we have appearing this morning?

15                  MR. POMERANTZ: Good morning, Your Honor. It's Jeff  
16 Pomerantz, John Morris, and Greg Demo here on behalf of the  
17 Debtor.

18                  THE COURT: Okay. Thank you.

19                  All right. We have objections on HarbourVest. Who do we  
20 have appearing for Mr. Dondero this morning?

21                  MR. WILSON: Your Honor, it's John Wilson, and I'm  
22 also joined by Michael Lynn, John Bonds, and Bryan Assink.

23                  THE COURT: Okay. I'm sorry. Could -- the court  
24 reporter does yeoman's work in this case. Let me just make  
25 sure we got all three of those names. Say again, Mr. Wilson.

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1 MR. WILSON: John Bonds and Michael Lynn and Bryan  
2 Assink.

3 THE COURT: Oh, okay. So, see, I thought I heard  
4 somebody Wilson in all of that, which was why I was pressing  
5 the issue.

6 All right. Is Mr. Dondero present on the video for  
7 today's hearing?

8 MR. WILSON: I believe he is, Your Honor.

9 THE COURT: Mr. Dondero, could you confirm that you  
10 are out there? (No response.) Okay. My court reporter says  
11 he sees the name out there. Is he in your office?

12 MR. WILSON: Your Honor, he is appearing remotely  
13 from my office. I'm not sure exactly where he's appearing  
14 from.

15 THE COURT: Okay. Well, Mr. Dondero, if you're out  
16 there and you're speaking up to confirm you're present, we're  
17 not hearing you. Maybe your device is on mute. So please  
18 unmute yourself.

19 (No response.)

20 THE COURT: All right. I'm going to take some other  
21 appearances and you -- you need to try to communicate with  
22 your client and let him know I need to confirm he's present.  
23 Okay?

24 All right. Meanwhile, let's go to our other Objectors.  
25 CLO Holdco. Who do we have appearing today?

1 MR. KANE: John Kane; Kane Russell Coleman & Logan;  
2 on behalf of CLO Holdco.

3 THE COURT: All right. Thank you, Mr. Kane.

4 We had an objection from Dugaboy Investment Trust and Get  
5 Good Trust. Who do we have appearing?

6 MR. DRAPER: Douglas Draper, Your Honor, for -- for  
7 Draper.

8 THE COURT: All right. Thank you, Mr. Draper.

9 All right. I think those were the only written objections  
10 we had. Mr. Pomerantz, do you confirm, we don't have any  
11 other objectors for the motions set, correct?

12 MR. POMERANTZ: Your Honor, there was those three.

13 THE COURT: I'm sorry. I didn't catch your full  
14 sentence.

15 MR. POMERANTZ: That is correct, Your Honor. There  
16 were three objections to the motion.

17 THE COURT: Okay. Mr. Clemente, you're there for the  
18 Creditors' Committee?

19 MR. CLEMENTE: Yes. Good morning, Your Honor. Matt  
20 Clemente on behalf of the Official Committee of Unsecured  
21 Creditors.

22 THE COURT: All right. Good morning. Thank you.  
23 All right. We have a lot of other folks on the video. I'm  
24 not going to go ahead and take a roll call of other lawyers.

25 MS. WEISGERBER: Your Honor?

1 THE COURT: Yes?

2 MS. WEISGERBER: Excuse me, Your Honor. It's Erica  
3 Weisgerber from Debevoise on behalf of HarbourVest.

4 THE COURT: Okay.

5 MS. WEISGERBER: And I'm joined by Natasha Labovitz  
6 and Dan Stroik --

7 THE COURT: Okay.

8 MS. WEISGERBER: -- from Debevoise as well.

9 THE COURT: Thank you. I was neglectful in not  
10 getting your appearance, because, of course, you're at the  
11 front and center of this motion to compromise, and I did see  
12 that you filed a reply brief yesterday afternoon. Okay.  
13 Thank you.

14 All right. Do we have -- do we have Mr. Dondero on the  
15 line? I'm going to check again.

16 (No response.)

17 THE COURT: Mr. Dondero's counsel, I cannot hear you,  
18 so please unmute your device.

19 MR. WILSON: Your Honor, it appears to me that Mr.  
20 Dondero's device was unmuted as soon as you asked if he was  
21 available. I sent him a communication a second ago asking if  
22 he's having technical difficulties. I have not received a  
23 response, so I --

24 MR. DONDERO: Hello. Can anybody hear me?

25 THE COURT: Oh.



1 MR. WILSON: Okay. I hear him.

2 THE COURT: Mr. Dondero?

3 MR. DONDERO: Hello?

4 THE COURT: Is that you?

5 MR. DONDERO: Yeah, it is. I've been on. I've heard  
6 everything since the beginning. It's just we've had technical  
7 difficulties. I couldn't use the Highland offices. We've  
8 been trying to set up something else.

9 THE COURT: All right.

10 MR. DONDERO: But I'm on now, if -- yes.

11 THE COURT: All right. Very good. Well, I'm glad  
12 we've got you.

13 All right. Well, Mr. Pomerantz, how did you want to  
14 proceed this morning?

15 MR. POMERANTZ: Your Honor, we could take up the  
16 HarbourVest motion first, and I will turn it over to John  
17 Morris. He and Greg Demo will be handling that. And then  
18 after that we can handle the other motion, which is unopposed.

19 THE COURT: All right. Mr. Morris?

20 MR. KANE: Your Honor, this is -- sorry. This is  
21 John Kane for CLO Holdco. Just very briefly, if I may. And  
22 this will affect, I think, the Debtor's case in chief, so I'll  
23 expedite things a little bit, I believe.

24 CLO Holdco has had an opportunity to review the reply  
25 briefing, and after doing so has gone back and scrubbed the

1 HCLOF corporate documents. Based on our analysis of Guernsey  
2 law and some of the arguments of counsel in those pleadings  
3 and our review of the appropriate documents, I obtained  
4 authority from my client, Grant Scott, as Trustee for CLO  
5 Holdco, to withdraw the CLO Holdco objection based on the  
6 interpretation of the member agreement.

7 THE COURT: All right. Well, thank you for that, Mr.  
8 Kane. I think that -- that eliminates one of the major  
9 arguments that we had anticipated this morning. So, thank you  
10 for that.

11 Any other housekeeping matters that maybe someone had that  
12 I didn't ask about?

13 MS. MATSUMURA: Yes, Your Honor. This is Rebecca  
14 Matsumura from King & Spalding representing Highland CLO  
15 Funding, Ltd. I just wanted to put on the record, we -- our  
16 client had requested that some of its organizational documents  
17 be filed under seal. But we have given permission for the  
18 parties to present the relevant excerpts, to the extent it's  
19 still relevant after Mr. Kane's announcement, in court. And  
20 we'd just ask that the underlying documents remain sealed, but  
21 we're not going to object if they show them on a PowerPoint or  
22 anything like that.

23 So, to the extent that you had that on your radar, I just  
24 wanted to clear that up for the proceedings.

25 THE COURT: All right. Well, I did sign an order

1 late last night. I don't know if it's popped up on the  
2 docket.

3 MS. MATSUMURA: Yes, Your Honor. That's what this  
4 referred to. That was what -- these are the documents that  
5 were being sealed. And so I just wanted to note, if you --  
6 you know, if the Debtor puts up an excerpt of those documents  
7 and you're like, wait a minute, didn't I seal those, that we  
8 were the party that requested them be under seal and we're  
9 fine with them being shown in court, as long as the underlying  
10 documents aren't publicly accessible.

11 THE COURT: Okay. Got you. Thank you.

12 All right. Any other housekeeping matters?

13 MR. MORRIS: Yes, Your Honor. This is John Morris  
14 from Pachulski Stang for the Debtor. Good morning.

15 THE COURT: Good morning.

16 MR. MORRIS: The only other matter that I wanted to  
17 raise, and I can do it now or I can do it later, or Your Honor  
18 may tell me that it's not appropriate to do at this time, is  
19 to schedule the Debtor's motion to hold Mr. Dondero in  
20 contempt for violation of the TRO.

21 THE COURT: All right. Well, let's do that at the  
22 conclusion today. And please make sure I do it. I think I  
23 was going to address this last Friday, and we went very late  
24 and it slipped off my radar screen. But I did see from my  
25 courtroom deputy that you all were reaching out to her

1 yesterday to get this set, and then Mr. Dondero's counsel  
2 reached out to her and said, We're going to file an objection  
3 to a setting next Wednesday, or I think you had asked for a  
4 setting next Tuesday or Wednesday.

5 MR. MORRIS: I did.

6 THE COURT: And I don't -- I don't know if that  
7 response/objection was ever filed last night. I haven't seen  
8 it if it was. So, we'll -- please, make sure I don't forget.  
9 We'll take that up at the end of today's matters. All right.  
10 Well, --

11 MR. MORRIS: All right. So, --

12 MS. WEISGERBER: Your Honor, one last housekeeping  
13 item from -- I'm joined this morning by Michael Pugatch of  
14 HarbourVest, who will present some testimony this morning. I  
15 just want to confirm he's on the line and confirm no  
16 objections to him sitting in for the rest of the hearing.

17 THE COURT: All right. Mr. Pugatch, this is Judge  
18 Jernigan. Could you respond? Are you there with us?

19 MR. PUGATCH: Yes. Good morning, Your Honor. Mike  
20 Pugatch from HarbourVest here.

21 THE COURT: All right. Very good. I think we had  
22 you testify once before in the Acis matter, if I'm not  
23 mistaken. Maybe. Maybe not. Maybe I saw a video deposition.  
24 I can't remember.

25 All right. So, we're going to let Mr. Pugatch sit in on

1 this. Anyone want to say anything about that? I consider him  
2 a party representative, so I don't -- I don't think anyone  
3 could invoke the Rule.

4 All right. Very good. Well, let's go forward if there  
5 are no more housekeeping matters.

6 MR. MORRIS: Okay.

7 THE COURT: Mr. Morris?

8 MR. MORRIS: Thank you. Thank you very much, Your  
9 Honor. John Morris; Pachulski Stang Ziehl & Jones; for the  
10 Debtor.

11 It's a rather straightforward motion today. It's a motion  
12 under Rule 9019, pursuant to which the Debtor requests the  
13 Court's authority and approval to enter into a settlement  
14 agreement with HarbourVest that will resolve a number of  
15 claims that HarbourVest has filed against the Debtor.

16 What I -- the way I propose to proceed this morning, Your  
17 Honor, is to give what I hope is an informative but relatively  
18 brief opening statement. I'll defer to HarbourVest and its  
19 counsel as to whether they want to make a presentation in  
20 advance of the offer of evidence. Any objecting party, I  
21 suppose, should then be given the opportunity to present their  
22 case to the Court. Then the Debtor will call Jim Seery, the  
23 Debtor's CEO and CRO. We will offer documents into evidence.  
24 I would propose then that the objecting parties take the  
25 opportunity to ask Mr. Seery any questions they'd like on the

1 matter.

2 After the Debtor rests, I think HarbourVest would like to  
3 put Mr. Pugatch on the stand to offer some testimony on their  
4 behalf. And I think that that will conclude the case. We can  
5 finish up with some closing arguments as to what we believe  
6 the evidence showed, but that's the way that I'd like to  
7 proceed, if that's okay with the Court.

8 THE COURT: All right. That sounds fine.

9 OPENING STATEMENT ON BEHALF OF THE DEBTOR

10 MR. MORRIS: Okay. So, as I said, Your Honor, this  
11 is a -- this should be a very straightforward motion under  
12 Rule 9019. The standard is well-known to the Court. There  
13 are four elements to a 9019 motion. The Debtor clearly has  
14 the burden of proof on each one. And we easily meet that  
15 burden, Your Honor.

16 The standard, just to be clear, the first part is that we  
17 have to establish a probability of success, with due  
18 consideration for uncertainty of law and fact. The second one  
19 is the complexity, likely duration, expense and inconvenience  
20 of the litigation. The third part of the test is the  
21 paramount interest of creditors. And the fourth part of the  
22 test is whether or not the proposed settlement was reached  
23 after arm's-length negotiations.

24 The Debtor believes that it easily meets this standard,  
25 and frankly, is a little bit frustrated that it's being forced

1 to incur the expense by Mr. Dondero in going through this  
2 process.

3 A plain reading, a fair reading of the economics here  
4 relative to the claim shows that this is a very reasonable  
5 settlement. I don't need to go beyond that, Your Honor. I  
6 don't even need to use the word reasonable. It surely meets  
7 the lowest standard.

8 We've prepared a couple of demonstrative exhibits, Your  
9 Honor. I'm going to use them with Mr. Seery. But I'd like to  
10 just put one up on the screen now, if I may.

11 Ms. Canty, can you please put up Demonstrative Exhibit #3?

12 Demonstrative Exhibit #3 is an outline of the economics of  
13 the settlement. It includes the various pieces, the  
14 components that the parties have agreed to. And it shows, at  
15 least from the Debtor's perspective, just what HarbourVest is  
16 being given here.

17 Up on the screen is a demonstrative exhibit. It has  
18 citations to the evidence that will be admitted by the Court.  
19 The first line shows that HarbourVest will receive a \$45  
20 million allowed general unsecured nonpriority claim. And that  
21 -- that can be found at Debtor's Exhibit EE, Exhibit 1, at  
22 Page 2.

23 That claim is discounted by the expected recovery that  
24 general unsecured creditors are supposed to get. As of  
25 November, in the liquidation analysis that was part of the



1 disclosure statement -- that's the citation in the footnote --  
2 the Debtor believed that unsecured creditors were estimated to  
3 recover approximately eighty-seven and a half cents on the  
4 dollar. And so we just did the arithmetic there to get to the  
5 net economic value of the proposed general unsecured claim.

6 And from that, we reduced \$22-1/2 million because that is  
7 the net asset value of HarbourVest's interest in HCLOF, which,  
8 pursuant to the settlement agreement, it will transfer back to  
9 the Debtor, so that the net economic value is approximately  
10 \$16.8 million.

11 You will hear testimony from Mr. Seery that this number  
12 is, in fact, overstated, and it's overstated because, since  
13 the time the disclosure statement was filed in November, a  
14 number of events have occurred that will -- that have caused  
15 the estimated recovery percentage to be reduced from  
16 approximately 87-1/2 percent to something lower than that. We  
17 don't have the exact number, Your Honor, but Mr. Seery will --  
18 and the evidence will show that there's been more expenses,  
19 that there's been some resolution of certain claims. There's  
20 been some positive issues, too. But that number is probably  
21 in the 70s somewhere.

22 And in any event, I think the point here is, Your Honor,  
23 HarbourVest invested \$80 million in HCLOF, which was going to  
24 participate in the investment in CLOs. They filed a claim for  
25 \$300 million, through treble damages and other claims. But

1 the net economic impact of this is going to be somewhere  
2 probably in between \$12 and \$14 million. I'll let Mr. Seery  
3 give more precision to that. And it represents less than -- a  
4 less than five percent recovery on the total claim.

5 And we think it's important for the Court to keep that in  
6 mind. What are the economics here? Are we overpaying? Is  
7 this an unreasonable settlement? And I think the evidence  
8 will show that the Debtor is not, but that this settlement  
9 that you see before you was the product of arm's length, and  
10 I'm going to go in reverse order of the four-part test under  
11 9019.

12 So, the last part is whether or not the settlement, the  
13 proposed settlement was the product of arm's-length  
14 negotiation. You'll hear lots of evidence that this  
15 settlement that's up on the screen right now very much was the  
16 product of arm's-length negotiation.

17 The third part of the test, Your Honor, is whether it  
18 meets the paramount interest of creditors. You know,  
19 regrettably, Mr. Dondero is the only purported creditor who is  
20 objecting here. He may have done so through different  
21 vehicles, but every objecting party here is a debtor [sic]  
22 owned and controlled by Mr. Dondero. No other creditor -- not  
23 the Creditors' Committee, UBS, Acis, Mr. Terry, Mr. Daugherty  
24 -- nobody is objecting to this settlement except for Mr.  
25 Dondero. And we believe that that highlights the Debtor's

1 ability to meet the third prong of the test, and that is these  
2 are -- this settlement is in the paramount interest of  
3 creditors.

4 Again, going in reverse, the second part of the test is  
5 the complexity, duration, and expense of litigation. There  
6 will be no disputed evidence that we meet -- the Debtor easily  
7 meets this prong of the test. The evidence is going to show  
8 that HarbourVest's claim is based on fraud, fraud in the  
9 inducement, fraudulent statements and omissions, the kind of  
10 case, Your Honor, that I'm sure you're familiar with that is  
11 incredibly fact-intensive, that will be incredibly difficult  
12 to navigate through. It will be prolonged, it will be  
13 expensive, because you're necessarily relying on he said/she  
14 said, basically. And so we're going to have to get testimony  
15 from every person that spoke in connection with the events  
16 leading up to the transaction. So we think the second prong  
17 will be easily met, Your Honor.

18 And then the last prong -- the first prong, if you will --  
19 is the likelihood of success on the merits. We think that the  
20 settlement, the economic recovery that's up on the screen  
21 here, which ultimately will be less than five percent of the  
22 claimed amount, in and of itself shows that the settlement is  
23 consistent with the Debtor's perception of its likely success  
24 on the merits. I'm certain that HarbourVest disagrees, but  
25 that's okay, we're here today and that's the Debtor's view,

1 and the Court is here to assess the Debtor's business judgment  
2 and whether the Debtor has properly analyzed the issues and  
3 gone through the process. And the evidence will show  
4 conclusively that it will. That it has.

5 Mr. Seery will testify at some length as to the risks that  
6 he saw. I think that you'll hear counsel for Mr. Dondero ask  
7 both Mr. Seery and Mr. Pugatch a number of questions designed  
8 to elicit testimony about this defense or that defense. And  
9 it's a little -- it's a little ironic, Your Honor, because,  
10 really, every defense that they're going to try to suggest to  
11 the Court was a valid defense is a defense that the Debtor  
12 considered. In fact, it's, you know, it's a little spooky,  
13 how they've -- how they've been able to identify kind of the  
14 arguments that the Debtor had already considered in the  
15 prosecution of their objections here.

16 But be that as it may, the evidence will conclusively show  
17 that the Debtor acted consistent with its fiduciary duties,  
18 acted in the best interests of the Debtor's estate, acted  
19 completely appropriately here in getting yet another very  
20 solid achievement for the Debtor, leaving very few claims that  
21 are disputed at this point, all but one of which I believe are  
22 in the hands of Mr. Dondero.

23 So, that's what we think that the evidence will show.

24 I do want to express my appreciation to Mr. Kane for  
25 reflecting on the arguments that we made with respect to the

1 ability of the Debtor to engage in the transfer or the  
2 acquisition of the asset from HarbourVest. I would -- I would  
3 respectfully request that we just enter into a short  
4 stipulation on the record reflecting that the Debtor's  
5 acquisition of HarbourVest's interests in HCLOF is compliant  
6 with all of the applicable agreements between the parties.

7 And with that, Your Honor, I look forward to putting Mr.  
8 Seery on the stand and presenting the Debtor's case.

9 THE COURT: All right. Other opening statements?

10 OPENING STATEMENT ON BEHALF OF CLO HOLDCO, LTD.

11 MR. KANE: Yes, Your Honor. Sorry. John Kane on  
12 behalf of CLO Holdco.

13 In response to Mr. Morris, I'm not going to enter into a  
14 stipulation on behalf of my client, but the Debtor is  
15 compliant with all aspects of the contract. We withdrew our  
16 objection, and we believe that's sufficient.

17 THE COURT: All right. Well, I'm content with that.  
18 Other opening statements?

19 OPENING STATEMENT ON BEHALF OF HARBOURVEST

20 MS. WEISGERBER: Your Honor, Erica Weisgerber on  
21 behalf of HarbourVest.

22 HarbourVest joins in Mr. Morris's comments in support of  
23 the settlement, and we believe that the question of whether  
24 the settlement between HarbourVest and the Debtor satisfies  
25 the Rule 9019 standard is not even a close one.

1           Some Objectors have made arguments about the merits of  
2 HarbourVest's claims, which is why we're here. As Your Honor  
3 will hear this morning, HarbourVest has meaningful and  
4 meritorious claims against Highland, but made the business  
5 decision to avoid the time, expense, and inherent risk of  
6 litigation in the interest of preserving value, both for  
7 itself and for the estate.

8           Today, Michael Pugatch, a managing director of  
9 HarbourVest, will testify before the Court. He'll explain  
10 that HarbourVest claims against Highland arise out of certain  
11 misrepresentations and omissions by Highland to HarbourVest in  
12 connection with HarbourVest's purchase of an interest in  
13 HCLOF, one of Highland's managed funds. Those  
14 misrepresentations and omissions, as Your Honor will hear,  
15 relate to Highland's litigation with its former employee,  
16 Joshua Terry, and transfers that were conducted in 2017 to  
17 strip Acis of value and prevent Mr. Terry from collecting on  
18 an \$8 million judgment.

19           Mr. Pugatch will further explain that HarbourVest would  
20 not have invested in HCLOF had it known the underlying facts  
21 about those Acis transfers.

22           Mr. Pugatch will also testify that not only did  
23 HarbourVest not know about those transfers, it learned about  
24 those transfers when it was accused of orchestrating the  
25 transfers itself in the Acis bankruptcy. Your Honor will hear

1 that the Acis trustee sought extensive discovery from  
2 HarbourVest after numerous accusations that HarbourVest was  
3 behind the transfers.

4 Mr. Pugatch will also testify that Highland charged legal  
5 fees for itself and its affiliates to HCLOF, essentially  
6 forcing HCLOF to fund the litigation involving the Acis  
7 bankruptcy and Mr. Terry.

8 In total, HarbourVest's claims for damages are over a  
9 hundred million dollars in investment-related losses, lost  
10 profits, legal fees inappropriately charged to HCLOF, its own  
11 legal fees. And that's before interest or trebling damages.

12 But HarbourVest stands ready to litigate its claims, but  
13 following hard-fought and extensive negotiations with the  
14 Debtors, the parties reached the settlement that's now before  
15 the Court. Mr. Pugatch's testimony regarding the strong  
16 factual bases for HarbourVest's claims against Highland and  
17 its recoverable damages will further underscore the risks that  
18 the Debtors faced if they chose to litigate these claims, and  
19 why this settlement is fair, equitable, and in the best  
20 interest of the estate.

21 THE COURT: All right. Thank you, Counsel.

22 Other opening statements?

23 OPENING STATEMENT ON BEHALF OF GET GOOD AND DUGABOY TRUSTS

24 MR. DRAPER: Your Honor, this is Douglas Draper on  
25 behalf of one of the Objectors. I'd like to just make a few



1 comments with respect to what I've heard and what the Court is  
2 going to hear.

3 The first issue I'd like to address is the comment by  
4 counsel for the Debtor that no other party has objected. The  
5 9019 motion is one of the issues that this Court has to rule  
6 on, whether or not there was an objection or not. So the fact  
7 that this may be -- bankruptcy is not a popularity contest and  
8 not an issue of who votes for what and doesn't vote. This,  
9 along with the 1129(a) tests, are clearly within your  
10 province, and you need to listen carefully because you'll have  
11 to make your own independent analysis whether my objection is  
12 correct or incorrect.

13 Two other points I'd like to make that I think are very  
14 salient. Number one is, if you look at the Debtor's  
15 disclosure statement, it basically took the position that the  
16 HarbourVest claim is of little or no value. And lo and  
17 behold, thirty days later, there's a settlement that brings  
18 about a significant recovery to HarbourVest. The timing is  
19 interesting, and I think the Court needs to pay careful  
20 attention to what transpired between the two dates.

21 And then the last point I'd like to make is, as you listen  
22 to the evidence, and what I learned abundantly clear from  
23 hearing the depositions, is that the claim of HarbourVest, if  
24 there is a claim at all, is probably one hundred percent --  
25 should be subordinated in that it appears to arise out of the

1 purchase or sale of a security. And, again, I would ask the  
2 Court to listen carefully to this because that's what it  
3 appears to be and that's what the evidence is going to show to  
4 the Court.

5 THE COURT: All right. Mr. Draper, let me clarify  
6 something I'm not sure if I heard you say or not. Were you  
7 saying that the Court still needs to drill down on the issue  
8 of whether the Debtor can acquire HarbourVest's interest in  
9 HCLOF?

10 MR. DRAPER: No.

11 THE COURT: Okay. I was confused whether you were  
12 saying I needed to take an independent look at that, now that  
13 the objection has been withdrawn of Holdco. You are not  
14 pressing that issue?

15 MR. DRAPER: No, I am not. Basically, I think it's  
16 the fairness of the settlement. I think the transferability  
17 of the interest is separate and apart from the fairness of the  
18 settlement itself. I think the fairness -- the  
19 transferability was a contractual issue between two parties  
20 that the Court does not have to drill down on.

21 THE COURT: All right. I have another question for  
22 you. I want to clarify your client's standing. Tell me --  
23 I'm looking through a chart I printed out a while back. I  
24 guess Dugaboy Investment Trust filed a couple of proofs of  
25 claim; is that right?

1 MR. DRAPER: Yes.

2 THE COURT: Okay. What --

3 MR. DRAPER: And objections are pending.

4 THE COURT: Pardon?

5 MR. DRAPER: Objections to those claims are pending  
6 before the Court, Your Honor, --

7 THE COURT: Okay.

8 MR. DRAPER: -- and have not been litigated.

9 THE COURT: And what about Get Good Trust?

10 MR. DRAPER: Get Good Trust has a proof of claim also  
11 that objections are pending to. Pending.

12 THE COURT: Okay. I don't want to get too  
13 sidetracked here, but I know standing was -- was mentioned as  
14 a legal argument today. What is the basis for those proofs of  
15 claim?

16 MR. DRAPER: The first one is, with respect to the  
17 proof of claim for Dugaboy, there is an investment that  
18 Dugaboy made that was then funneled, we believe, up to the  
19 Debtor. And the -- the loan that exists, we believe is a  
20 Debtor loan, as opposed to a loan to the entity that we made  
21 the loans to.

22 And, again, it's a matter that the Court is going to hear.  
23 The claim may or may not be allowed. It has not been  
24 disallowed yet.

25 The second part to the Dugaboy ownership is we own an

1 interest in the Debtor. And so we are, in fact, a party in  
2 interest.

3 THE COURT: Okay.

4 MR. DRAPER: It may be a small interest, but it is an  
5 interest.

6 THE COURT: It has a limited partnership interest in  
7 the Debtor?

8 MR. DRAPER: Yes.

9 THE COURT: Is that correct?

10 MR. DRAPER: Yes.

11 THE COURT: Okay. Well, I'll move forward. Thank  
12 you.

13 Does that cover -- any other opening statements? I think  
14 that covered everyone who was -- who filed some sort of  
15 pleading today. No.

16 MR. WILSON: Your Honor, John Wilson on behalf of --

17 THE COURT: I'm sorry. I'm sorry.

18 MR. WILSON: -- Mr. Dondero.

19 THE COURT: I missed Mr. Dondero's counsel. I knew  
20 we had visited at some point this morning. I just got  
21 confused there. Go ahead, Mr. Wilson.

22 MR. WILSON: No problem, Your Honor. I was just  
23 going to say that we will reserve our comments until after the  
24 conclusion of the testimony.

25 THE COURT: All right. Very well.

1 Mr. Morris, you may call your first witness.

2 MR. MORRIS: Thank you, Your Honor. Before I do,  
3 just two very, very quick points.

4 THE COURT: Okay.

5 MR. MORRIS: To be clear, Dugaboy's interest in the  
6 Debtor is 0.1866 percent. Less than two-tenths of one  
7 percent.

8 Secondly, the argument that Mr. Draper just made with  
9 respect to subordination is one that appears in nobody's  
10 papers. And, in fact, not only doesn't it appear in anybody's  
11 papers, but Mr. Dondero, I believe, specifically took issue  
12 with the fact that a portion of the consideration that  
13 HarbourVest would receive would be on a subordinated basis,  
14 and he would -- and I think he took the position there is no  
15 basis to give them a subordinated claim.

16 So, I just wanted to point those items out to the Court,  
17 not that I think either one makes a large difference today,  
18 but I do want to deal with the facts.

19 THE COURT: Thank you.

20 MR. MORRIS: The Debtor would call -- you're welcome,  
21 Your Honor. The Debtor calls Mr. James Seery.

22 THE COURT: All right. Mr. Seery, welcome back to  
23 virtual court. If you could say, "Testing, one, two" so I can  
24 see you and swear you in.

25 MR. SEERY: Testing, one, two.

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1 THE COURT: All right. I heard you but I'm not yet  
2 seeing your video. Is your video turned on?

3 MR. SEERY: Video is on. Yes, Your Honor.

4 THE COURT: Okay. I see you now. Please raise your  
5 right hand.

6 JAMES SEERY, DEBTOR'S WITNESS, SWORN

7 THE COURT: Thank you. Mr. Morris?

8 MR. MORRIS: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. MORRIS:

11 Q Good morning, Mr. Seery. Can you hear me?

12 A I can. Thank you, Mr. Morris.

13 Q Okay. Let's just cut to the chase here. Are you familiar  
14 with HarbourVest's claims filed against the Debtor?

15 A I am, yes.

16 Q And did you personally review them?

17 A I did, yes.

18 Q Do you recall that over the summer the Debtor objected to  
19 HarbourVest's claim?

20 A Yes, we did.

21 Q Why -- can you explain to the judge why Harbour -- why the  
22 Debtor objected to HarbourVest's claim last summer?

23 A Sure. The HarbourVest claims, I believe there are about  
24 six of them, initially were filed, and they were -- they were  
25 relatively vague in terms of what the specifics of the claims

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1 were.

2 So, we saw the claims but didn't, frankly, pay a lot of  
3 attention to the underlying transaction that was referred to  
4 in the proofs of claim and the losses that HarbourVest had  
5 claimed to suffer -- to suffer with respect to their purchase  
6 of securities related to HCLOF and the damages caused by the  
7 Acis case. So we filed a pretty pro forma objection. I  
8 believe it was a simply stated objection that we didn't have  
9 any record that there was anything in the Debtor's books and  
10 records that they had a valid claim for any amount against the  
11 Debtor.

12 Q Are you aware that HarbourVest subsequently filed a  
13 response to the Debtor's objection to their claims?

14 A Yes. Yes, I am aware.

15 Q And did you familiarize yourself with that particular  
16 response?

17 A I did indeed. It was a pretty extensive response, really  
18 developing the full panoply of their claims, which included  
19 claims for expenses relating to the Acis case, which  
20 HarbourVest viewed as being improperly charged to HCLOF by its  
21 manager, which is effectively Highland. Those expenses,  
22 HarbourVest took the view, were excessive, had nothing to do  
23 with the investment, and were simply a pursuit of a personal  
24 vendetta against Mr. Terry and his interests by Mr. Dondero,  
25 and using HCLOF's money to actually pursue those interests.



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1 In addition, and this was the first time we saw that,  
2 HarbourVest brought forth its claims that it was entitled to  
3 effectively rescind the transaction. And I say rescind the  
4 transaction: In security parlance, they claim that they were  
5 induced by fraud, I think as most are -- to enter into the  
6 transaction.

7 As most are aware, the liability limitations in the OMs  
8 and the exculpation in the documents are pretty broad, and  
9 HarbourVest's position was that they weren't going to be  
10 subject to those limitations because the actual transaction  
11 that they entered into was a fraud on them, designed by Mr.  
12 Dondero, Mr. Ellington, and the Highland team.

13 Q All right. Let's talk about your understanding, the  
14 Debtor's understanding of the factual background to  
15 HarbourVest's claim. What is your understanding of the  
16 investment that HarbourVest made?

17 A Well, HarbourVest made an investment in the Highland CLO  
18 business. The Highland CLO business was -- was Acis. And  
19 effectively, the business had been separated, but in name  
20 only. Acis was just a shell, with a few partners --  
21 obviously, Mr. Terry as well -- but it was all Highland  
22 personnel doing all the work.

23 And what they were trying to do with Acis was, in essence,  
24 resuscitate a business that had been in a bit of a decline  
25 from its pre-crisis heyday.

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1 They were looking to take additional outside capital.

2 They would -- they would pay down or take money out of the  
3 transaction, Highland would, or ultimately Mr. Dondero, and  
4 they would -- they would seek to invest in Acis CLOs,  
5 Highland's 1.0 CLOs. And then with respect to the Acis CLOs,  
6 and potentially new CLOs, but with the Acis CLOs, they'd seek  
7 to reset those and capture what they thought would be an  
8 opportunity in the market to -- to really use the assets that  
9 were there, not have to gather assets in the warehouse but be  
10 able to use those assets to reset them to market prices for  
11 the liabilities and then make money on the equity.

12 Q Do you have an understanding --

13 A Then --

14 Q I'm sorry. Go ahead.

15 A Why don't I continue? So, the transaction, they found  
16 HarbourVest as a potential investor, and the basis of the  
17 transaction was that they would make an investment into Acis.

18 Shortly before the transaction, and while they were doing  
19 diligence, Mr. Terry received his arbitration award. I  
20 believe that was in October of 2017. The transaction with  
21 HarbourVest closed in mid- to late November of 2017. But Mr.  
22 Terry was not an integral part. Indeed, he wasn't going to be  
23 a key man. He had been long gone from Highland by that time.

24 What the -- I think you asked me originally what the basis  
25 of their claim was. The transaction went forward, and the

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1 basis of their claim is that they really were never -- nothing  
2 was disclosed to them about the nature of the dispute with Mr.  
3 Terry other than in the highest-level terms; the animosity  
4 with respect to which that dispute was held by Highland and  
5 potentially Mr. Terry; and really, how those costs would be  
6 borne and risks be borne by the investment that they were  
7 making.

8 That was, in essence, the transaction and the high-level  
9 view of their claim.

10 Q Okay. Just a few very specific facts. Do you have an  
11 understanding as to how much HarbourVest invested and what  
12 they got in exchange for that investment?

13 A Yeah. HarbourVest invested in a couple tranches, and I  
14 forget the exact dates, but approximately \$75 million  
15 originally, and then they added another five. Some  
16 distributions were made in the first half of 2018, putting  
17 their net investment in the mid-seventies on the investment,  
18 which now is worth about 22-1/2 million bucks.

19 Q And what percentage interest in HCLOF did HarbourVest  
20 acquire, to the best of your knowledge?

21 A They have 49.98 percent of HCLOF. HCLOF, just to refresh  
22 -- the Court is, I think, well aware of this, but to refresh,  
23 is a Guernsey entity. Not -- not atypical for structures of  
24 this type to use offshore jurisdictions and sell the  
25 securities under -- at least to U.S. -- can't sell them to

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1 U.S. investors unless they qualify, and these are sold under  
2 Reg S to -- to investors that otherwise qualify. And  
3 HarbourVest was investing in that transaction through the  
4 Guernsey structure.

5 Q And do you have an understanding as to who owned the 50-  
6 plus percent of HCLOF that HarbourVest was not going to  
7 acquire?

8 A Yeah. There's -- you can tell by the name. HCLOF is  
9 Highland CLO Funding. This is a Highland vehicle. So  
10 Highland owned and controlled the vehicle. The DAF, which is  
11 -- which is Dondero-controlled trusts, have the -- 49 percent.  
12 Highland has, I believe, around .63-65 percent directly. And  
13 then Highland employees at the time who were involved in the  
14 business owned another small percentage.

15 So the majority was going to be controlled by Highland  
16 through its control of DAF and its control of the employees  
17 that worked for it. HarbourVest would be a minority investor.

18 Q Okay. And I believe you testified that the investment was  
19 made in mid-November; is that right?

20 A That's correct. I think it was the 15th, may have been  
21 the 17th of November.

22 Q And do you recall when in October the Terry arbitration  
23 award was rendered?

24 A It was about a month before. I think it was right around  
25 the 20th, the 17th to the 20th. I may be slightly wrong on

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1 each of those dates.

2 Q Okay. What is your understanding as to what happened  
3 after the issuance of the award that is the basis or at least  
4 one of the bases for HarbourVest's claim?

5 A I don't think there's -- I don't think there's any  
6 dispute. And there certainly are judicial findings. Dondero  
7 and Highland went about stripping Acis of all of its assets.  
8 So, remember that Acis is not a separate standalone company,  
9 in any event. It's controlled and dominated completely by  
10 Highland at the time. But it did have contracts. And those  
11 contracts had value.

12 So the first idea was to strip out the management contract  
13 and put it into a separate vehicle, which we called HCF  
14 Advisor, which Highland still owns. The second piece was to  
15 strip out some valuable assets, the risk retention piece,  
16 which was a loan that in essence was equity that Highland had  
17 put into Acis but structured as a loan, as many of the  
18 transactions we'll see down the road are, in order to deal  
19 with some -- avoid taxes in any way possible. And that  
20 structure, that value moved value out of Acis for the express  
21 purpose of trying to run, in essence, the Highland business  
22 back in Highland.

23 Remember, as I said, Acis is just a Highland business  
24 moved to a separate shell. When Mr. Terry got his arbitration  
25 award against Acis and was seeking to enforce it, it was

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1 pretty straightforward, let's take all the assets -- Dondero  
2 scheme -- let's take all the assets and move them back into  
3 Highland so Terry can't get anything.

4 Q And how does that scheme relate to the HarbourVest claim,  
5 to the best of your knowledge?

6 A Well, HarbourVest -- HarbourVest's position is that they  
7 invested in Acis and -- and whether Acis was called Acis or  
8 called Highland, it doesn't really matter; there were valuable  
9 assets in the -- in the entity that they were going to be  
10 investing in through the equity in these CLOs and some of the  
11 debt securities in those CLOs.

12 And then the stripping out and the fraudulent conveyances  
13 out of Acis caused them damages because that's what left the  
14 damage to Mr. Terry.

15 The quick math on Acis, by the way, is Acis has probably  
16 lost, total damages, 175 million bucks. And that's pretty  
17 easy. DAF lost 50. HarbourVest lost 50. Fifteen million of  
18 fees charged to HCLOF. Another five million of fees, at  
19 least, incurred by Mr. Terry. Ten million that went to Mr.  
20 Terry, 15 to Highland fees, another five, plus Mr. Terry's  
21 settlement in this case, over eight million bucks.

22 So HarbourVest's position, which, on a factual basis, you  
23 know, is problematic for the estate, is, wait a second, we  
24 invested in this vehicle with Highland. That was supposed to  
25 invest in Highland CLOs. They were called Acis, but they were

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1 Highland CLOs. And then you went about causing tremendous  
2 damage to that vehicle that we ultimately were investing in,  
3 and then charge us for the pleasure.

4 Q You used the phrase earlier "OM," I believe.

5 A Offering memorandum.

6 Q Offering memorandum? Can you just explain to the Court  
7 your understanding of what an offering memorandum is?

8 A Typically, under U.S. law, and foreign jurisdictions have  
9 similar laws, you have to have a document that explains the  
10 securities that you're selling. And it goes into extreme  
11 detail about the securities and the risks related to those  
12 securities.

13 And the idea is not to have a document that tells you  
14 whether it's a good investment or a bad investment, but it's a  
15 document that discloses to the potential investor all of the  
16 risks with respect to that security or related to the  
17 investment over the duration of the security. It doesn't  
18 predict the future, but it's supposed to make sure that it  
19 gives you a very clean view of the past and a very clean view  
20 of what the facts from the past are and how they would  
21 implicate the future of the investment.

22 Q And in the course of its diligence, did the Debtor have an  
23 opportunity to review the offering memorandum in the context  
24 of the claims that were being asserted by HarbourVest?

25 A Oh, absolutely. It was originally effectively -- it's an



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1 HCLOF offering memorandum. But as I said, HCLOF was managed  
2 and controlled by Highland, and Highland originally prepared  
3 it. And then, of course, in connection with -- with this  
4 dispute and these claims, we reviewed it, both myself and my  
5 legal team.

6 Q All right.

7 MR. MORRIS: Your Honor, the offering memorandum is  
8 on the Debtor's exhibit list, and I think this is an  
9 appropriate time to move into evidence Debtor's Exhibits A  
10 through EE, all of which appear at **Docket No. 1732**.

11 THE COURT: 1732?

12 MR. MORRIS: It's the Debtor's Second Amended Witness  
13 and Exhibit List.

14 THE COURT: All right. Any objection to admission of  
15 A through EE?

16 MR. DRAPER: Douglas Draper. No objection, Your  
17 Honor.

18 THE COURT: All right. Mr. --

19 MR. MORRIS: May I proceed?

20 THE COURT: Yeah. Mr. Wilson, did you want to  
21 confirm no objection?

22 (Echoing.)

23 THE COURT: All right. Hearing no objection,  
24 Debtor's A through EE are admitted.

25 (Debtor's Exhibits A through EE are received into

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1 evidence.)

2 THE COURT: Go ahead, Mr. Morris.

3 MR. MORRIS: Thank you, Your Honor. The offering  
4 memorandum itself is one of the documents that we filed under  
5 seal, and we did so at the request of counsel to HCLOF. But  
6 HCLOF has consented to our sharing up on the screen certain  
7 very limited provisions of the document, without waiving the  
8 request that the agreement otherwise be maintained under seal.

9 THE COURT: All right.

10 MR. MORRIS: So may I proceed on that basis, Your  
11 Honor?

12 THE COURT: You may. Uh-huh.

13 MR. MORRIS: Okay. Ms. Canty, can you please put up  
14 on the screen Demonstrative Exhibit #1? Okay. Can we just --  
15 is there a way to just expand that just a bit, Ms. Canty?  
16 Thank you very much. And if we could just scroll it up?  
17 Thank you very much. Perfect.

18 Okay. So, Your Honor, this, as the footnote says, is an  
19 excerpt from the offering memorandum that can be found at  
20 Debtor's Exhibit AA. Double A. And this particular portion  
21 of the offering memorandum is at Page 35.

22 THE COURT: Okay.

23 BY MR. MORRIS:

24 Q Mr. Seery, have you seen this portion of the offering  
25 memorandum before?

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1 A Yes, I have. But before I continue, I just -- I should  
2 have checked. Are you able to hear me clearly? Am I speaking  
3 too quickly or am I cutting out? I just want to make sure.  
4 I'm using a different set of audio today.

5 THE COURT: All right.

6 MR. MORRIS: That's fine.

7 THE COURT: I hear you very well.

8 MR. MORRIS: Yeah.

9 THE COURT: So I think we're good right now. Thank  
10 you.

11 THE WITNESS: Yeah. Thank you, Your Honor. I was  
12 just checking.

13 THE COURT: Okay.

14 THE WITNESS: In response to your question, Mr.  
15 Morris, yes, I have seen this before.

16 BY MR. MORRIS:

17 Q Okay. And can you -- did you form a view in doing the due  
18 diligence as to the adequacy of this disclosure?

19 A Yes, I did.

20 Q Can you share your -- or share with Judge Jernigan the  
21 Debtor's view as to the adequacy of this disclosure concerning  
22 the litigation between Highland and Acis?

23 A With respect to the litigation between Highland and Acis,  
24 or, really, between Acis, Highland, and Highland's principals  
25 and Acis's principal, totally inadequate. The disclosure here

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1 is very high-level. And if there were no other litigation  
2 going on, it might serve to suffice. It basically says, In  
3 our business, because we invest in distressed loans, there's a  
4 lot of litigation around distressed investments, and that's  
5 what we have. And then it says, We've talked with the  
6 investor about other things and we're -- we think that's  
7 enough.

8 Q Is there anything in this portion or anywhere in the  
9 offering memorandum that you're aware of that disclosed to  
10 HarbourVest that in the weeks leading up to the investment  
11 Highland was engaged in the fraudulent transfer of assets away  
12 from Acis?

13 A No. And I apologize, because I think it's -- I've  
14 conflated two provisions. This one only deals with the very  
15 high-level nature of the business. It doesn't give any  
16 indication that there's any material litigation going on  
17 elsewhere with respect to Acis.

18 I believe there's another provision that says, We -- we  
19 have talked to -- oh, here -- I'm sorry. It is here.  
20 Shareholders have had an opportunity to discuss with Highland  
21 to their satisfaction all litigation matters against Highland  
22 and its affiliates unrelated to its distressed business.

23 That, in my opinion, is wholly inadequate.

24 Q Okay.

25 MR. MORRIS: And let's put up -- actually, let's just

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